

PRIVILEGE IN CIVIL CASES

IICLE LECTURE MATERIALS

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Rule 501 of the Illinois Rules of Evidence states as follows:

"Except as otherwise required by the Constitution of the United States, the Constitution of Illinois, or provided by applicable statute or rule prescribed by the Supreme Court, the privilege of a witness, person, government, state, or political subdivision thereof shall be governed by the principles of common law as they may be interpreted by Illinois Courts in the light of reason and experience.

The most comprehensive text or treatise relating to Illinois privilege law is Cleary and Graham's Handbook of Illinois Evidence (Res. 10th Edition). Section 501 of Cleary and Graham parallels Section 501 of the new Illinois Rule of Evidence. Section 501.1 tells us that evidentiary privileges are designed to permit the exclusion of evidence for reasons unconnected with the quality of the evidence or the credibility of witnesses. The underlying rationale for a privilege is the desire to protect an interest or relationship recognized by the law as significant. Traditionally, the Illinois Courts have held that the extension of existing privileges, or the establishment of new privileges, should be left to the legislature (see People Exweld Birkett v. City of Chicago, 184 Ill.2d 521, 705 N.E.2d 48 (1998)).

The first important point to remember on this subject is that the person exerting the privilege has the burden of proof to establish facts which would give rise to the privilege (see Consolidated Coal Company v. Bucyrus-Erie Company, 89 Ill.2d 103, 432 N.E.2d 250 (1982)).

There are three sources for privileges. They are: the State and Federal Constitution; statutes, and common law.

CONSTITUTIONAL PRIVILEGE

The Illinois Constitution (Article 1, Section 10) and the Fifth Amendment to the United States Constitution, contain almost identical language stating that "no person shall be compelled in any criminal case to give evidence against himself." Although

the constitutional language is narrow, and applies only to a "criminal case", those constitutional provisions have been constructed to protect a witness from giving evidence in any forum that may be used against him in a criminal proceeding (See Lamson v. Boyden, 160 Ill. 613, 43 N.E. 781 (1896), Cleary and Graham, Section 502.2).

For our purposes, it is essential to note that a witness cannot be compelled to give incriminating testimony in civil cases if that evidence may tend to convict him of a criminal offense (See Kantner v. Clerk of the Circuit Court, 108 Ill.App.287, 301 (1903)). The privilege against self-incrimination is not waived by the participation in a civil action, filing a Complaint, interpleading a Counterclaim, pleading an Affirmative Defense, or responding to Interrogatories unless the document amounts to an admission of guilt (Ten Dax Building Corporation v. McDannel, 134 Ill.App.3d 664, 89 Ill.Dec. 469 (1985)). The right to the privilege is waived by the disclosure of incriminating information during discovery. (See Cleary and Graham, §502.5)

For discussion of privilege in the civil context, it is significant to note that compulsory breath, urine, saliva or other bodily substance tests do not violate any constitutional right of an individual mainly because one objects to those tests. And, the results of those tests are admissible in a civil trial arising out of acts committed while driving under the influence of liquor (625 ILCS 5/11-501.1 and 11.501.2. See also Cleary and Graham, Section 502.7 and Section 503.3 (Intoxication as evidence of negligence).

STATUTORY PRIVILEGE

Most privileges against compulsory disclosure are the product of statute. Even traditional privileges like the physician/patient privilege, do not arise under common law but, rather, are creatures of statute. The following are privileges that arise as a result of a statutory enactment.

Physician

Section 735 ILCS 5/8-802 establishes the physician/patient privilege:

8-802. Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to

serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his or her death or disability, of his or her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, or as authorized by Section 8-2001.5, (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) in any criminal action where the charge is either first degree murder by abortion, attempted abortion or abortion, (7) in actions, civil or criminal, arising from the filing of a report in compliance with the Abused and Neglected Child Reporting Act, [\[FN1\]](#) (8) to any department, agency, institution or facility which has custody of the patient pursuant to State statute or any court order of commitment, (9) in prosecutions where written results of blood alcohol tests are admissible pursuant to Section 11-501.4 of the Illinois Vehicle Code, [\[FN2\]](#) (10) in prosecutions where written results of blood alcohol tests are admissible under Section 5-11a of the Boat Registration and Safety Act, [\[FN3\]](#) (11) in criminal actions arising from the filing of a report of suspected terrorist offense in compliance with Section 29D-10(p) (7) of the Criminal Code of 1961, [\[FN4\]](#) or (12) upon the issuance of a subpoena pursuant to Section 38 of the Medical Practice Act of 1987; the issuance of a subpoena pursuant to Section 25.1 of the Illinois Dental Practice Act; the issuance of a subpoena pursuant to Section 22 of the Nursing Home Administrators Licensing and Disciplinary Act; or the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act.

In the event of a conflict between the application of this Section and the Mental Health and Developmental Disabilities Confidentiality Act [\[FN5\]](#) to a specific situation, the provisions of the Mental Health and Developmental Disabilities Confidentiality Act shall control.

In a civil case, when a patient's physical and mental condition is an issue (735 ILCS 5/8-802(4)), disclosure of medical information must be made through formal discovery procedures. In the context of civil litigation, it is well known that *ex parte* communications are disclosed with information between a physician and a patient's legal adversary are prohibited (Petrillo v. Syntex Labs, Inc., 148 Ill.App.3d 581, 499 N.E.2d 952 (1986), Cleary and Graham, Section 503.1).

Medical Studies

The Medical Studies Act provides a privilege to certain health care providers against disclosure of specific types of internal quality control studies. This privilege is limited, and the assertion of rights under the statute at issue must be scrutinized carefully. The medical studies act (735 ILCS 5/8-2101 and 5/8-2102) provides in part as follows:

§ 8-2101. Information obtained. All information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential assessments of a health care practitioner's professional competence, or other data of the Illinois Department of Public Health, local health departments, the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), the Mental Health and Developmental Disabilities Medical Review Board, Illinois State Medical Society, allied medical societies, health maintenance organizations, medical organizations under contract with health maintenance organizations or with insurance or other health care delivery entities or facilities, tissue banks, organ procurement agencies, physician-owned insurance companies and their agents, committees of ambulatory surgical treatment centers or post-surgical recovery centers or their medical staffs, or committees of licensed or accredited hospitals or their medical staffs, including Patient Care Audit Committees, Medical Care Evaluation Committees, Utilization Review Committees, Credential Committees and Executive Committees, or their designees (but not the medical records pertaining to the patient), used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care or increasing organ and tissue donation, shall be privileged, strictly confidential and shall be used only for medical research, increasing organ and tissue donation, the evaluation and

improvement of quality care, or granting, limiting or revoking staff privileges or agreements for services, except that in any health maintenance organization proceeding to decide upon a physician's services or any hospital or ambulatory surgical treatment center proceeding to decide upon a physician's staff privileges, or in any judicial review of either, the claim of confidentiality shall not be invoked to deny such physician access to or use of data upon which such a decision was based.

§ 8-2102. Admissibility as evidence. Such information, records, reports, statements, notes, memoranda, or other data, shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person. The disclosure of any such information or data, whether proper, or improper, shall not waive or have any effect upon its confidentiality, nondiscoverability, or nonadmissibility.

The purpose for the Medical Studies Act is strictly to ensure the effectiveness of peer group and quality control self evaluation. The Act only protects documents which arise from the workings of the medical study group or committee: The Act does not protect the results or final reports or recommendations (Chicago Trust Company v. Cook County Hospital, 298 Ill.App.3d 396, 405, 232 Ill.Dec. 550 (1st Dist. 1998), Toth v. Jensen, 272 Ill.App.3d 282, 208 Ill.Dec. 428 (1st Dist. 1995)). Generally, incident and accident reports are not protected. (Cook County Trust Company v. Cook County Hospital, 298 Ill.App.3d 396, 698 N.E.2d 641 (1st Dist. 1998), Dunkin v. Silver Cross Hospital, Ill.App.3d 1991, 158 Ill.Dec. 35, 215 Ill.App.3d 65, 573 N.E.2d 848.)

It has been held that the Act does protect some material used by, but not created by, a Peer Review Committee, such as medical journal articles (Anderson v. Rush-Copley Medical Center, Inc., 385 Ill.App.3d 167, 894 N.E.2d 827 (2nd Dist. 2008)) Courts are careful to prevent the transformation of discoverable information into privileged information by later referencing that material during a peer review process. See Roach v. Springfield Clinic, 167 Ill.2d 29, 191 Ill.Dec. 1, 623 N.E.2d 246 (1993).

As with every privilege, the party seeking to evoke the Medical Studies Act has the burden of establishing that the privilege applies. Kopolovic v. Shah, 359 Ill.Dec. 638, 967 N.E.2d 368 (2nd Dist. 2012).

Psychiatrist

The privilege between a psychiatrist and a patient is governed by 735 ILCS 5/8-802 and the Mental Health and Development Disabilities Confidentiality Act (740 ILCS 110/1-110/17). 740 ILCS 110/10 states in pertinent part.

§ 10. (a) Except as provided herein, in any civil, criminal, administrative, or legislative proceeding, or in any proceeding preliminary thereto, a recipient, and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications.

(1) Records and communications may be disclosed in a civil, criminal or administrative proceeding in which the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal or other action for review of an administrative determination may be taken, finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from injury to the therapist-recipient relationship or to the recipient or other whom disclosure is likely to harm. Except in a criminal proceeding in which the recipient, who is accused in that proceeding, raises the defense of insanity, no record or communication between a therapist and a recipient shall be deemed relevant for purposes of this subsection, except the fact of treatment, the cost of services and the ultimate diagnosis unless the party seeking disclosure of the communication clearly establishes in the trial court a compelling need for its production. However, for purposes of this Act, in any action brought or

defended under the Illinois Marriage and Dissolution of Marriage Act, [\[FN1\]](#) or in any action in which pain and suffering is an element of the claim, mental condition shall not be deemed to be introduced merely by making such claim and shall be deemed to be introduced only if the recipient or a witness on his behalf first testifies concerning the record or communication.

(2) Records or communications may be disclosed in a civil proceeding after the recipient's death when the recipient's physical or mental condition has been introduced as an element of a claim or defense by any party claiming or defending through or as a beneficiary of the recipient, provided the court finds, after in camera examination of the evidence, that it is relevant, probative, and otherwise clearly admissible; that other satisfactory evidence is not available regarding the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from any injury which disclosure is likely to cause.

(3) In the event of a claim made or an action filed by a recipient, or, following the recipient's death, by any party claiming as a beneficiary of the recipient for injury caused in the course of providing services to such recipient, the therapist and other persons whose actions are alleged to have been the cause of injury may disclose pertinent records and communications to an attorney or attorneys engaged to render advice about and to provide representation in connection with such matter and to persons working under the supervision of such attorney or attorneys, and may testify as to such records or communication in any administrative, judicial or discovery proceeding for the purpose of preparing and presenting a defense against such claim or action.

(4) Records and communications made to or by a therapist in the course of examination ordered by a court for good cause shown may, if otherwise relevant and admissible, be disclosed in a civil, criminal, or administrative proceeding in which the recipient is a party or in appropriate pretrial proceedings, provided such court has found that the recipient has been as adequately and as effectively as possible informed before submitting to such examination that such records and communications would not be considered confidential or privileged. Such records and

communications shall be admissible only as to issues involving the recipient's physical or mental condition and only to the extent that these are germane to such proceedings.

(5) Records and communications may be disclosed in a proceeding under the Probate Act of 1975, [\[FN2\]](#) to determine a recipient's competency or need for guardianship, provided that the disclosure is made only with respect to that issue.

(6) Records and communications may be disclosed to a court-appointed therapist, psychologist, or psychiatrist for use in determining a person's fitness to stand trial if the records were made within the 180-day period immediately preceding the date of the therapist's, psychologist's or psychiatrist's court appointment. These records and communications shall be admissible only as to the issue of the person's fitness to stand trial. Records and communications may be disclosed when such are made during treatment which the recipient is ordered to undergo to render him fit to stand trial on a criminal charge, provided that the disclosure is made only with respect to the issue of fitness to stand trial.

(7) Records and communications of the recipient may be disclosed in any civil or administrative proceeding involving the validity of or benefits under a life, accident, health or disability insurance policy or certificate, or Health Care Service Plan Contract, insuring the recipient, but only if and to the extent that the recipient's mental condition, or treatment or services in connection therewith, is a material element of any claim or defense of any party, provided that information sought or disclosed shall not be redisclosed except in connection with the proceeding in which disclosure is made.

(8) Records or communications may be disclosed when such are relevant to a matter in issue in any action brought under this Act and proceedings preliminary thereto, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

(9) Records and communications of the recipient may be disclosed in investigations of and trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide.

(10) Records and communications of a deceased recipient may be disclosed to a coroner conducting a preliminary investigation into the recipient's death under Section 3-3013 of the Counties Code. [\[FN3\]](#) However, records and communications of the deceased recipient disclosed in an investigation shall be limited solely to the deceased recipient's records and communications relating to the factual circumstances of the incident being investigated in a mental health facility.

(11) Records and communications of a recipient shall be disclosed in a proceeding where a petition or motion is filed under the Juvenile Court Act of 1987 [\[FN4\]](#) and the recipient is named as a parent, guardian, or legal custodian of a minor who is the subject of a petition for wardship as described in Section 2-3 of that Act [\[FN5\]](#) or a minor who is the subject of a petition for wardship as described in Section 2-4 of that Act [\[FN6\]](#) alleging the minor is abused, neglected, or dependent or the recipient is named as a parent of a child who is the subject of a petition, supplemental petition, or motion to appoint a guardian with the power to consent to adoption under Section 2-29 of the Juvenile Court Act of 1987. [\[FN7\]](#)

(12) Records and communications of a recipient may be disclosed when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed may not be used for any other purposes nor may it be redisclosed except in connection with collection activities. Whenever records are disclosed pursuant to this subdivision (12), the recipient of the records shall be advised in writing that any person who discloses mental health records and communications in violation of this Act may be subject to civil liability pursuant to Section 15 of this Act or to criminal penalties pursuant to Section 16 of this Act or both.

(b) Before a disclosure is made under subsection (a), any party to the proceeding or any other interested person may request an in camera review of the record or communications to be disclosed. The court or agency conducting the proceeding may hold an in camera review on its own motion. When, contrary to the express wish of the recipient, the therapist asserts a privilege on behalf and in the interest of a recipient, the court may require that the therapist, in an in camera hearing, establish that disclosure is not in the best interest of the recipient. The court or agency may prevent disclosure or limit disclosure to the extent that other admissible evidence is sufficient to establish the facts in issue. The court or agency may enter such orders as may be necessary in order to protect the confidentiality, privacy, and safety of the recipient or of other persons. Any order to disclose or to not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal.

(c) A recipient's records and communications may be disclosed to a duly authorized committee, commission or subcommittee of the General Assembly which possesses subpoena and hearing powers, upon a written request approved by a majority vote of the committee, commission or subcommittee members. The committee, commission or subcommittee may request records only for the purposes of investigating or studying possible violations of recipient rights. The request shall state the purpose for which disclosure is sought.

The facility shall notify the recipient, or his guardian, and therapist in writing of any disclosure request under this subsection within 5 business days after such request. Such notification shall also inform the recipient, or guardian, and therapist of their right to object to the disclosure within 10 business days after receipt of the notification and shall include the name, address and telephone number of the committee, commission or subcommittee member or staff person with whom an objection shall be filed. If no objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications to the committee, commission or subcommittee. If an objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and

communications only after the committee, commission or subcommittee has permitted the recipient, guardian or therapist to present his objection in person before it and has renewed its request for disclosure by a majority vote of its members.

Disclosure under this subsection shall not occur until all personally identifiable data of the recipient and provider are removed from the records and communications. Disclosure under this subsection shall not occur in any public proceeding.

(d) No party to any proceeding described under paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a) of this Section, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. No such written order shall be issued without written notice of the motion to the recipient and the treatment provider. Prior to issuance of the order, each party or other person entitled to notice shall be permitted an opportunity to be heard pursuant to subsection (b) of this Section. No person shall comply with a subpoena for records or communications under this Act, unless the subpoena is accompanied by a written order authorizing the issuance of the subpoena or the disclosure of the records. Each subpoena duces tecum issued by a court or administrative agency or served on any person pursuant to this subsection (d) shall include the following language: "No person shall comply with a subpoena for mental health records or communications pursuant to Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10, unless the subpoena is accompanied by a written order that authorizes the issuance of the subpoena and the disclosure of records or communications."

(e) When a person has been transported by a peace officer to a mental health facility, then upon the request of a peace officer, if the person is allowed to leave the mental health facility within 48 hours of arrival, excluding Saturdays, Sundays, and holidays, the facility director shall notify the local law enforcement authority prior to the release of the person. The local law enforcement authority may re-disclose the information as necessary to

alert the appropriate enforcement or prosecuting authority.

(f) A recipient's records and communications shall be disclosed to the Inspector General of the Department of Human Services within 10 business days of a request by the Inspector General (i) in the course of an investigation authorized by the Department of Human Services Act and applicable rule or (ii) during the course of an assessment authorized by the Abuse of Adults with Disabilities Intervention Act [\[FN8\]](#) and applicable rule. The request shall be in writing and signed by the Inspector General or his or her designee. The request shall state the purpose for which disclosure is sought. Any person who knowingly and willfully refuses to comply with such a request is guilty of a Class A misdemeanor. A recipient's records and communications shall also be disclosed pursuant to subsection (g-5) of Section 1-17 of the Department of Human Services Act in testimony at health care worker registry hearings or preliminary proceedings when such are relevant to the matter in issue, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

Marriage Therapist

The Marriage and Family Therapist Privilege arises under 225 ILCS 55/70.

§ 70. Privileged communications and exceptions.

(a) No licensed marriage and family therapist or associate marriage and family therapist shall disclose any information acquired from persons consulting the marriage and family therapist or associate marriage and family therapist in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(1) In the course of formally reporting, conferring, or consulting with administrative superiors, colleagues, or consultants who share professional responsibility, in which instance all recipients of the information are similarly bound to regard the communications as privileged;

(2) With the written consent of the person who provided the information;

(3) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition;

(4) When a communication reveals the intended commission of a crime or harmful act and the disclosure is judged necessary by the licensed marriage and family therapist or associate marriage and family therapist to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or

(5) When the person waives the privilege by bringing any public charges, criminal, or civil, against the licensee.

(b) Any person having access to records or any one who participates in providing marriage and family therapy services or who, in providing any human services, is supervised by a licensed marriage and family therapist, is similarly bound to regard all information and communications as privileged in accord with this Section.

(c) The Mental Health and Developmental Disabilities Confidentiality Act [\[FN1\]](#) is incorporated in this Act as if all of its provisions were included in this Act.

Genetic Counselor

A genetic counselor privilege arises under 225 ILCS 136\5/90.

§ 90. Privileged communications and exceptions.

(a) With the exception of disclosure to the physician performing or supervising a genetic test and to the referring physician licensed to practice medicine in all its branches, advanced practice nurse, or physician assistant, no licensed genetic counselor shall disclose any information acquired from persons consulting the counselor in a professional capacity, except that which may be voluntarily disclosed under any of the following

circumstances:

(1) In the course of formally reporting, conferring, or consulting with administrative superiors, colleagues, or consultants who share professional responsibility, in which instance all recipients of the information are similarly bound to regard the communication as privileged.

(2) With the written consent of the person who provided the information and about whom the information concerns.

(3) In the case of death or disability, with the written consent of a personal representative.

(4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary in the professional judgment of the licensed genetic counselor to protect any person from a clear risk of serious mental or physical harm or injury or to forestall a serious threat to the public safety.

(5) When the person waives the privilege by bringing any public charges or filing a lawsuit against the licensee.

(b) Any person having access to records or anyone who participates in providing genetic counseling services, or in providing any human services, or is supervised by a licensed genetic counselor is similarly bound to regard all information and communications as privileged in accord with this Section.

(c) The Mental Health and Developmental Disabilities Confidentiality Act is incorporated herein as if all of its provisions were included in this Act. In the event of a conflict between the application of this Section and the Mental Health and Developmental Disabilities Confidentiality Act to a specific situation, the provisions of the Mental Health and Developmental Disabilities Confidentiality Act shall control.

Domestic Violence

Domestic violence counselors have a privilege under 750 ILCS 60/227 and 227.1

§ 227. Privileged communications between domestic violence counselors and victims.

(a) As used in this Section:

(1) "Domestic violence program" means any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.

(2) "Domestic violence advocate or counselor" means any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.

(3) "Confidential communication" means any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. The confidential nature of the communication is not waived by the presence at the time of the communication of any additional persons, including but not limited to an interpreter, to further express the interests of the domestic violence victim or by the advocate's or counselor's disclosure to such an additional person with the consent of the victim when reasonably necessary to accomplish the purpose for which the advocate or counselor is consulted.

(4) "Domestic violence victim" means any person who consults a domestic violence counselor for the purpose of securing advice, counseling or assistance related to one or

more alleged incidents of domestic violence.

(5) "Domestic violence" means abuse as defined in the Illinois Domestic Violence Act. [\[FN1\]](#)

(b) No domestic violence advocate or counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal case or proceeding or in any legislative or administrative proceeding without the written consent of the domestic violence victim except (1) in accordance with the provisions of the Abused and Neglected Child Reporting Act [\[FN2\]](#) or (2) in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.

(c) A domestic violence advocate or counselor who knowingly discloses any confidential communication in violation of this Act commits a Class A misdemeanor.

(d) When a domestic violence victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the domestic violence victim or the executor or administrator of the estate of the domestic violence victim may waive the privilege established by this Section, except where the guardian, executor or administrator of the estate has been charged with a violent crime against the domestic violence victim or has had an Order of Protection entered against him or her at the request of or on behalf of the domestic violence victim or otherwise has an interest adverse to that of the domestic violence victim with respect to the waiver of the privilege. In that case, the court shall appoint an attorney for the estate of the domestic violence victim.

(e) A minor may knowingly waive the privilege established by this Section. Where a minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, except where such parent or guardian has been charged with a violent crime against the minor or has had an Order of Protection entered against him or her on request of or on behalf of the minor or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege. In that case, the court shall

appoint an attorney for the minor child who shall be compensated in accordance with Section 506 of the Illinois Marriage and Dissolution of Marriage Act. [\[FN3\]](#)

(f) Nothing in this Section shall be construed to limit in any way any privilege that might otherwise exist under statute or common law.

(g) The assertion of any privilege under this Section shall not result in an inference unfavorable to the State's cause or to the cause of the domestic violence victim.

§ 227.1. Other privileged information. Except as otherwise provided in this Section, no court or administrative or legislative body shall compel any person or domestic violence program to disclose the location of any domestic violence program or the identity of any domestic violence advocate or counselor in any civil or criminal case or proceeding or in any administrative or legislative proceeding. A court may compel disclosure of the location of a domestic violence program or the identity of a domestic violence advocate or counselor if the court finds, following a hearing, that there is clear and convincing evidence that failure to disclose would be likely to result in an imminent risk of serious bodily harm or death to a domestic violence victim or another person. If the court makes such a finding, then disclosure shall take place in camera, under a restrictive protective order that does not frustrate the purposes of compelling the disclosure, and the information disclosed shall not be made a part of the written record of the case.

Rape Counseling

A rape crisis counselor's privilege is established by 735 ILCS 5/8-802.1.

§ 8-802.1. Confidentiality of Statements Made to Rape Crisis Personnel.

(a) Purpose. This Section is intended to protect victims of rape from public disclosure of statements they make in confidence to counselors of organizations established to help them. On or after July 1, 1984, "rape" means an act of

forced sexual penetration or sexual conduct, as defined in Section 11-0.1 of the Criminal Code of 1961, as amended, [\[FN1\]](#) including acts prohibited under Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961, [\[FN2\]](#) as amended. Because of the fear and stigma that often results from those crimes, many victims hesitate to seek help even where it is available at no cost to them. As a result they not only fail to receive needed medical care and emergency counseling, but may lack the psychological support necessary to report the crime and aid police in preventing future crimes.

(b) Definitions. As used in this Act:

(1) "Rape crisis organization" means any organization or association the major purpose of which is providing information, counseling, and psychological support to victims of any or all of the crimes of aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual assault, sexual relations between siblings, criminal sexual abuse and aggravated criminal sexual abuse.

(2) "Rape crisis counselor" means a person who is a psychologist, social worker, employee, or volunteer in any organization or association defined as a rape crisis organization under this Section, who has undergone 40 hours of training and is under the control of a direct services supervisor of a rape crisis organization.

(3) "Victim" means a person who is the subject of, or who seeks information, counseling, or advocacy services as a result of an aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual assault, sexual relations within families, criminal sexual abuse, aggravated criminal sexual abuse, sexual exploitation of a child, indecent solicitation of a child, public indecency, exploitation of a child, promoting juvenile prostitution as described in subdivision (a)(4) of Section 11-14.4, or an attempt to commit any of these offenses.

(4) "Confidential communication" means any communication between a victim and a rape crisis counselor in the course of providing information, counseling, and advocacy. The

term includes all records kept by the counselor or by the organization in the course of providing services to an alleged victim concerning the alleged victim and the services provided.

(c) Waiver of privilege.

(1) The confidential nature of the communication is not waived by: the presence of a third person who further expresses the interests of the victim at the time of the communication; group counseling; or disclosure to a third person with the consent of the victim when reasonably necessary to accomplish the purpose for which the counselor is consulted.

(2) The confidential nature of counseling records is not waived when: the victim inspects the records; or in the case of a minor child less than 12 years of age, a parent or guardian whose interests are not adverse to the minor inspects the records; or in the case of a minor victim 12 years or older, a parent or guardian whose interests are not adverse to the minor inspects the records with the victim's consent, or in the case of an adult who has a guardian of his or her person, the guardian inspects the records with the victim's consent.

(3) When a victim is deceased, the executor or administrator of the victim's estate may waive the privilege established by this Section, unless the executor or administrator has an interest adverse to the victim.

(4) A minor victim 12 years of age or older may knowingly waive the privilege established in this Section. When a minor is, in the opinion of the Court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, unless the parent or guardian has been charged with a violent crime against the victim or otherwise has any interest adverse to that of the minor with respect to the waiver of the privilege.

(5) An adult victim who has a guardian of his or her person may knowingly waive the privilege established in this Section. When the victim is, in the opinion of the court, incapable of knowingly waiving the privilege, the guardian

of the adult victim may waive the privilege on behalf of the victim, unless the guardian has been charged with a violent crime against the victim or otherwise has any interest adverse to the victim with respect to the privilege.

(d) Confidentiality. Except as provided in this Act, no rape crisis counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal proceeding as to any confidential communication without the written consent of the victim or a representative of the victim as provided in subparagraph (c).

(e) A rape crisis counselor may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any rape crisis counselor or rape crisis organization participating in good faith in the disclosing of records and communications under this Act shall have immunity from any liability, civil, criminal, or otherwise that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this Section, the good faith of any rape crisis counselor or rape crisis organization who disclosed the confidential communication shall be presumed.

(f) Any rape crisis counselor who knowingly discloses any confidential communication in violation of this Act commits a Class C misdemeanor.

Crime Victims

Statements made to personnel counseling victims of violent crimes are privileged under 735 ILCS 5/8-802.2.

§ 8-802.2. Confidentiality of statements made to personnel counseling victims of violent crimes. (a) Purpose. This Section is intended to protect victims of violent crimes from public disclosure of statements they make in confidence to counselors of organizations established to help them. Because of the fear and trauma that often result from violent crimes, many victims hesitate to seek help even where it is available and may therefore lack the

psychological support necessary to report the crime and aid police in preventing future crimes.

(b) Definitions. As used in this Act, "violent crimes" include, but are not limited to, any felony in which force or threat of force was used against the victim or any misdemeanor which results in death or great bodily harm to the victim.

(c) Confidentiality. Where any victim of a violent crime makes a statement relating to the crime or its circumstances during the course of therapy or consultation to any counselor, employee or volunteer of a victim aid organization, the statement or contents thereof shall not be disclosed by the organization or any of its personnel unless the maker of the statement consents in writing or unless otherwise directed pursuant to this Section.

If in any judicial proceeding, a party alleges that such statements are necessary to the determination of any issue before the court and written consent to disclosure has not been given, the party may ask the court to consider the relevance and admissibility of the statements. In such a case, the court shall hold a hearing in camera on the relevance of the statements. If the court finds them relevant and admissible to the issue, the court shall order the statements to be disclosed.

HIV and AIDS Testing

Aids and HIV test results are privileged under the AIDS Confidentiality Act, 410 ILCS §305/9.

305/9. Disclosure of identity of person tested

§ 9. No person may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

(a) The subject of the test or the subject's legally authorized representative. A physician may notify the spouse of the test subject, if the test result is positive and has been confirmed pursuant to rules adopted by the

Department, provided that the physician has first sought unsuccessfully to persuade the patient to notify the spouse or that, a reasonable time after the patient has agreed to make the notification, the physician has reason to believe that the patient has not provided the notification. This paragraph shall not create a duty or obligation under which a physician must notify the spouse of the test results, nor shall such duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any disclosure or non-disclosure of a test result to a spouse by a physician acting in good faith under this paragraph. For the purpose of any proceedings, civil or criminal, the good faith of any physician acting under this paragraph shall be presumed.

(b) Any person designated in a legally effective release of the test results executed by the subject of the test or the subject's legally authorized representative.

(c) An authorized agent or employee of a health facility or health care provider if the health facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information.

(d) The Department and local health authorities serving a population of over 1,000,000 residents or other local health authorities as designated by the Department, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by State law. The Department, local health authorities, and authorized representatives shall not disclose information and records held by them relating to known or suspected cases of AIDS or HIV infection, publicly or in any action of any kind in any court or before any tribunal, board, or agency. AIDS and HIV infection data shall be protected from disclosure in accordance with the provisions of Sections 8-2101 through 8-2105 of the Code of Civil Procedure. [FN1]

(e) A health facility or health care provider which procures, processes, distributes or uses: (i) a human body part from a deceased person with respect to medical information regarding that person; or (ii) semen provided prior to the effective date of this Act for the purpose of

artificial insemination.

(f) Health facility staff committees for the purposes of conducting program monitoring, program evaluation or service reviews.

(f-5) A court in accordance with the provisions of Section 12-5.01 of the Criminal Code of 1961.

(g) (Blank).

(h) Any health care provider or employee of a health facility, and any firefighter or EMT-A, EMT-P, or EMT-I, involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment.

(i) Any law enforcement officer, as defined in subsection (c) of Section 7, involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment.

(j) A temporary caretaker of a child taken into temporary protective custody by the Department of Children and Family Services pursuant to Section 5 of the Abused and Neglected Child Reporting Act, as now or hereafter amended. [FN2]

(k) In the case of a minor under 18 years of age whose test result is positive and has been confirmed pursuant to rules adopted by the Department, the health care provider who ordered the test shall make a reasonable effort to notify the minor's parent or legal guardian if, in the professional judgment of the health care provider, notification would be in the best interest of the child and the health care provider has first sought unsuccessfully to persuade the minor to notify the parent or legal guardian or a reasonable time after the minor has agreed to notify the parent or legal guardian, the health care provider has reason to believe that the minor has not made the notification. This subsection shall not create a duty or obligation under which a health care provider must notify the minor's parent or legal guardian of the test results,

nor shall a duty or obligation be implied. No civil liability or criminal sanction under this Act shall be imposed for any notification or non-notification of a minor's test result by a health care provider acting in good faith under this subsection. For the purpose of any proceeding, civil or criminal, the good faith of any health care provider acting under this subsection shall be presumed.

STD Reporting Act

The STD Reporting Act, 745 ILCS 45/1, outlines the parameters and limits on disclosure of STD information.

§ 1. Whenever any statute of this State or any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute or any rule of an administrative agency adopted pursuant to statute requires medical practitioners or other persons to report cases of injury, medical condition or procedure, communicable disease, venereal disease, or sexually transmitted disease to any governmental agency or officer, such reports shall be confidential, and any medical practitioner or other person making such report in good faith shall be immune from suit for slander or libel based upon any statements contained in such report.

The identity of any individual who makes a report or who is identified in a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease, or food-borne illness or an investigation conducted pursuant to a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease, or food-borne illness shall be confidential and the identity of any person making a report or named therein shall not be disclosed publicly or in any action of any kind in any court or before any tribunal, board or agency; provided that records and communications concerning a venereal disease or sexually transmitted disease in any minor under 11 years of age shall be disclosed in accordance with the provisions of the Abused and Neglected Child Reporting Act, approved June 26, 1975, as now or hereafter amended. [\[FN1\]](#)

The confidentiality provisions of this Act do not apply to the results of tests for diseases conducted pursuant to subsections (g) and (g-5) of Section 5-5-3 and subsection (a) of Section 3-15-2 of the Unified Code of Corrections.

[\[FN2\]](#)

Nothing in this Act prohibits the sharing of information as authorized in Section 2.1 of the Department of Public Health Act.

Drug And Alcohol Treatment

The case of M.A.K. v. Rush-Presbyterian-St.-Luke's Medical Center, 198 Ill.2d 249, 764 N.E.2d 1, Ill.,2001 describes Federal Statutes and Rules applicable to records of addiction treatment:

"The regulation implements section 543 of the Public Health Service Act (Public Health Act) ([42 U.S.C. § 290dd-2 \(1994\)](#)). That section mandates the confidentiality of alcohol and drug abuse patient**5 ***714 records and prescribes the conditions and manner of release of such records. It states in pertinent part as follows:

"(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department*256 or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Permitted disclosure

(1) Consent

The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed

under regulations prescribed pursuant to subsection (g) of this section." [42 U.S.C. §§ 290dd-2\(a\)](#), [\(b\)](#) (1994).

Subsection (g) grants authority to the Department of Health and Human Services (Department) to promulgate regulations to implement the purposes of the law. [42 U.S.C. § 290dd-2\(g\)](#) (1994). The regulation sets forth the requirements of a written consent authorizing disclosure of a patient's alcohol or drug abuse treatment records. That section provides in pertinent part:

"(a) Required elements. A written consent to a disclosure under these regulations must include:

- (1) The specific name or general designation of the program or person permitted to make the disclosure.
- (2) The name or title of the individual or the name of the organization to which disclosure is to be made.
- (3) The name of the patient.
- (4) The purpose of the disclosure.
- (5) How much and what kind of information is to be disclosed.
- (6) The signature of the patient * * *.
- (7) The date on which the consent is signed.
- (8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. * * *
- (9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than *257 reasonably necessary to serve the purpose for which it is given." [42 C.F.R. § 2.31\(a\)](#) (2000). From 198 Ill.2d 249.

Clergy

Communications to clergy are privileged under 735 ILCS 5/8-803.

§ 8-803. Clergy. A clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs, shall not be compelled to disclose in any court, or to any administrative board or agency, or to any public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.

The broad language of the statute was intended to expand the traditional privilege of confessions made in pursuance of a search doctrine who made broader disclosures made in the course of spiritual counseling even within denominations not recognizing confession as an article of religious faith. Significantly, the privilege belongs both to the person making the statement and to the clergyman (People v. Brnidge, 729 Ill.App.3d 127, 664 N.E.2d 656 (1996)).

Union Activity

There is a statutory Union member privilege in 735 ILCS 5/803.5:

§ 8-803.5. Union agent and union member.

(a) Except when required in subsection (b) of this Section, a union agent, during the agency or representative relationship or after termination of the agency or representative relationship with the bargaining unit member, shall not be compelled to disclose, in any court or to any administrative board or agency arbitration or proceeding, whether civil or criminal, any information he or she may have acquired in attending to his or her professional duties or while acting in his or her representative capacity.

(b) A union agent may use or reveal information obtained during the course of fulfilling his or her professional representative duties:

(1) to the extent it appears necessary to prevent the commission of a crime that is likely to result in a clear, imminent risk of serious physical injury or death of another person;

(2) in actions, civil or criminal, against the union agent in his or her personal or official representative capacity, or against the local union or subordinate body thereof or international union or affiliated or subordinate body thereof or any agent thereof in their personal or official representative capacities;

(3) when required by court order; or

(4) when, after full disclosure has been provided, the written or oral consent of the bargaining unit member has been obtained or, if the bargaining unit member is deceased or has been adjudged incompetent by a court of competent jurisdiction, the written or oral consent of the bargaining unit member's estate.

(c) In the event of a conflict between the application of this Section and any federal or State labor law to a specific situation, the provisions of the federal or State labor law shall control.

Spouses

A marital and spousal privilege is created under 735 ILCS 5/8-801. That privilege includes oral and written conversations from one spouse to another which were intended to be confidential. It does not include non-verbal conduct or to observations.

§ 8-801. Husband and wife. In all actions, husband and wife may testify for or against each other, provided that neither may testify as to any communication or admission made by either of them to the other or as to any conversation between them during marriage, except in actions between such husband and wife, and in actions where the custody, support, health or welfare of their children

or children in either spouse's care, custody or control is directly in issue, and as to matters in which either has acted as agent for the other.

Public Accountants

A limited public accounting privilege is created under Section 225 ILCS 450/27:

§ 27. A licensed or registered certified public accountant shall not be required by any court to divulge information or evidence which has been obtained by him in his confidential capacity as a licensed or registered certified public accountant. This Section shall not apply to any investigation or hearing undertaken pursuant to this Act.

Significantly, the practical effect of this privilege is limited. A client's tax returns and the accountant's work papers related to prepare those returns are not confidential and thus are not protected by that privilege (Grand Jury No. 746, 124 Ill.2d 466, 530 N.E.2d 435 (1988)).

Social Worker

A social worker privilege is created under Section 225 ILCS 20/16.

§ 16. Privileged Communications and Exceptions.

1. No licensed clinical social worker or licensed social worker shall disclose any information acquired from persons consulting the social worker in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(a) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, including a professional responsibility to maintain confidentiality, in which instance all recipients of such information are similarly bound to regard the communication as privileged;

(b) With the written consent of the person who provided the information;

(c) In case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(d) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the licensed clinical social worker or licensed social worker to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety;

(e) When the person waives the privilege by bringing any public charges against the licensee; or

(f) When the information is acquired during the course of investigating a report or working on a case of elder abuse, neglect, or financial exploitation by a designated Elder Abuse Provider Agency and disclosure of the information is in accordance with the provisions of Section 8 of the Elder Abuse and Neglect Act. [\[FN1\]](#)

2. When the person is a minor under the laws of the State of Illinois and the information acquired by the licensed clinical social worker or licensed social worker indicates the minor was the victim or subject of a crime, the licensed clinical social worker or licensed social worker may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when, after in camera review of the information that the licensed clinical social worker or licensed social worker acquired, the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor, except as provided under the Abused and Neglected Child Reporting Act. [\[FN2\]](#)

3. Any person having access to records or any one who participates in providing social work services or who, in providing any human services, is supervised by a licensed clinical social worker or licensed social worker, is

similarly bound to regard all information and communications as privileged in accord with this Section.

4. Nothing shall be construed to prohibit a licensed clinical social worker or licensed social worker from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, except as provided under the Abused and Neglected Child Reporting Act.

5. The Mental Health and Developmental Disabilities Confidentiality Act, as now or hereafter amended, [\[FN3\]](#) is incorporated herein as if all of its provisions were included in this Act.

That privilege is inapplicable if abused or neglected children are involved and is limited to registered clinical social workers.

Reporters Sources

The reporter's privilege against disclosing sources is outlined in 735 ILCS 5/8-901. The provisions of the Act that follow this Section describe the procedure for challenging this privilege.

§ 8-901. Source of information. No court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act.

COURT RULE AND COMMON LAW PRIVILEGES

Discovery

Supreme Court Rule 201(b)(2) recognizes privilege as a bar to disclosure through discovery. It also protects the work of consultants involved in litigation.

(b) Scope of Discovery.

(1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the

claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in these rules, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage.

(2) *Privilege and Work Product*. All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including when appropriate a reasonable attorney's fee, in such manner as is just.

(3) *Consultant*. A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial. The identity, opinions, and work product of a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means.

Significantly, the second sentence of that Rule establishes a "work product" privilege that is not created by statute and is akin to lawyer/client privilege.

Lawyer/Client

Illinois Courts have adopted the common law attorney/client privilege to be stated as follows:

- (1) Where legal advice of any kind is sought,
- (2) From a professional legal advisor in his capacity as such,

- (3) The communications relating to that purpose,
- (4) Made in confidence,
- (5) By the client,
- (6) Are at his instance permanently protected,
- (7) From disclosure by himself or by the legal advisor,
- (8) Except when the protection is waived.

(People v. Adams, 51 Ill.2d 46, 48, 280 N.E.2d 205, (1972).)

The party asserting that privilege has the burden of establishing each of the elements set forth above (Cox v. Yellow Cab, 61 Ill.2d 416, 337 N.E.2d 15 (1975)).

The lawyer's obligations attaching to this privilege are outlined in Rules Of Professional conduct, Rule 1.6.

ILCS S Ct Rules of Prof.Conduct, RPC Rule 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);

(2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is

reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

(d) Information received by a lawyer participating in a meeting or proceeding with a trained intervener or panel of trained interveners of an approved lawyers' assistance program, or in an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred, shall be considered information relating to the representation of a client for purposes of these Rules.