

Babel v. Roman Catholic Diocese of Burlington, No. S0274-05 Cncv (Katz, J., May 1, 2008)

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STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. S0274-05 CnC

PERRY BABEL

v.

ROMAN CATHOLIC DIOCESE
OF BURLINGTON, VERMONT

ENTRY

Defendant Roman Catholic Diocese claims the physician-patient privilege over correspondence between Bishop Marshall and Father Bessette's treatment centers. The privilege covers only those communications which are confidential, meaning not intended to be disclosed to third-parties, between the patient and doctors or others who are participating in the treatment. See V.R.E. 503.

Documents in Bessette's personnel file, although they may contain medical or psychiatric information, are not confidential communications between a patient and doctor. They are communications between doctors and a third-party; although the Bishop had an interest in monitoring the

progress of Bessette's treatment, he was not 'participating' in the treatment as that term is used in the Rule. These documents are therefore outside of the scope of the privilege. See V.R.E. 503(b).

We are not persuaded that the underlying information contained in these reports was ever privileged in the first place. It was the Bishop's task to determine when Bessette could return to his priestly duties, if ever. Bessette's implicit permission for his doctor's reports must be inferred. His communications with his doctors are therefore not 'confidential' under the Rule. See V.R.E. 503(a)(6).

Even if Bessette's communications to his doctors were intended to be private, he waived his privilege when the doctor made reports without his objection. He may not be heard to complain now, some thirty years later, about disclosure of these same reports. See 503(b); see also March 10, 2006 Opinion and Order, Gay v. Roman Catholic Diocese of Burlington Vermont, et al., S0748-04 CnC.

The exception to the above is the 1992 Fanny Allen discharge notes. These medical notes are entirely physiological and how they came to be in the personnel file is not clear. This document will remain confidential.

The Diocese's motion for a protective order is DENIED in part, GRANTED in part.

Done at Burlington, Vermont, _____, 2008.

Judge