

Disclosing a confidence can be expensive

Business and Law



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For the Journal

People who tell their secrets hope their confidences will be kept. That was true of Kathleen Eckhardt, who told her confidences to William Kent McGregor, her therapist at Charter Counseling Center of Santa Fe, a unit of Charter Hospital of Albuquerque.

Eckhardt's and Charter's association turned sour in 1987, when McGregor was alleged to have sexually assaulted her. Nor were relationships improved when Courtney Cook, the Santa Fe center's director, told Eckhardt's husband about claims that he was an abusive spouse whose violence resulted from uncontrolled drinking.

Things like these tell you immediately that a big lawsuit is in the works — a lawsuit large, litigious and lengthy.

Charter's misdeeds injured Eckhardt in 1987. A few weeks ago, after more than 10 years of litigation, the N.M. Court of Appeals issued its opinion. Still, that opinion won't end the case. Appellate judges sent it down to District Court for a jury trial on Eckhardt's wrongful-disclosure claim.

BIG DAMAGES: Appellate judges, however, upheld more than \$350,000 worth of jury awards

against Charter on grounds other than wrongful disclosure.

McGregor, a certified social worker, didn't bother taking part in the case and the trial judge slammed him with a \$1 million default judgment.

Eckhardt's claim for wrongful disclosure was aimed at Cook, the Charter official who revealed information to Eckhardt's husband. Cook replied that information about Eckhardt was neither privileged nor confidential. As an administrative staff member, Cook said she owed no duty of confidentiality to Eckhardt.

When information is confidential, you must not reveal it. Many people, such as bankers, architects, advertising executives and others often receive confidential information. Information is privileged when you can't compel a witness to testify about it. Such

witnesses include doctors, psychologists, ministers and lawyers.

DIRECTING VERDICTS: The trial judge gave Charter a directed verdict on Eckhardt's wrongful-disclosure claim. The court bought Cook's argument that she intended no harm.

Judges direct verdicts after all the evidence is in. It's a verdict that means there's not enough evidence on a particular claim to let the jury decide, so the judge takes the case away from the jury and the court decides.

That, said the Court of Appeals, is not how this works. This was confidential information, said the court, and Eckhardt had no obligation to prove malice on Cook's part.

Eckhardt's claim was new to New Mexico. Neither statutes nor case law controlled on the issue of wrongful disclosure, so the judges decided on using "public policy." They found several statutes and rules supporting a patient's right to confidentiality.

KEEPING QUIET: In New Mexico, by statute, psychologists, social workers, mental health counselors and therapists and their staffs must keep their patients' confidences. The state's rules of

evidence recognize a privilege for communications to physicians and psychotherapists.

In addition, said the court, the State Constitution recognizes that crime victims have "the right to be treated with fairness and respect."

Still, statutory and constitutional rules add little to obligations that doctors, psychiatrists and psychologists impose on themselves. The American Medical Assn. requires physicians to "safeguard patient confidences within the constraints of the law."

Similar provisions govern psychiatrists and social workers such as McGregor.

Cook, herself, acknowledged from the witness stand her obligation to keep patients' confidences. Nevertheless, Cook insisted that the information wasn't privileged or confidential. This defense, said the judges, was contrary to law, and to Cook's own testimony as well.

SETTING PRECEDENT: The Court of Appeals ruling, taken narrowly, held that information given by Cook to Eckhardt's husband was confidential, and that Eckhardt didn't have to show an intent on Cook's part to harm her.

In the future, however, lawyers will use Eckhardt's case as precedent in lawsuits alleging

improper disclosure of confidential information by a variety of professional people. The safest course now is to keep peoples' confidences and avoid talking about them unless you have a signed authorization to do so.

This column deals with the opinion's confidentiality aspect. The court's full opinion contains a great deal more on other issues. The case, now more than 10 years old, was on its second appeal. It could easily go on for another year or two.

To read the whole opinion, look at *Eckhardt v. Charter Hospital of Albuquerque Inc.*, 37:7 State Bar Bulletin 19 (Feb. 12, 1998).

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