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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7  
8 THE PEOPLE OF THE STATE OF ) Case No.  
CALIFORNIA, )  
9 Plaintiff, ) POINTS AND AUTHORITIES  
10 vs. ) ON ADMISSIBILITY OF  
11 ) PSYCHIATRIC EVALUATION  
12 ) OF SEXUAL MOLEST VICTIM  
13 Defendant. ) POST PENAL CODE SECTION  
14 ) 1112 AND POST  
15 ) PROPOSITION 8  
Date:  
Time:  
Dept:

16 **FACTS**

17 (Set forth the particular facts in your case pertaining  
18 to the psychiatric evaluation of the victim, i.e., its  
19 purpose, scope and content.)

20 **ISSUE**

21  
22 Is a psychiatric evaluation of an alleged child molest  
23 victim admissible in light of the passage of Penal Code  
24 Section 1112 which made it unlawful for the court to order a  
25 child molest victim to undergo psychiatric or psychological  
26 evaluation?

27 **LAW**

28 This issue was addressed in **People vs. Hagerman** (1985)

1 164 CA3d 967. The **Hagerman** court held that **Ballard vs.**  
2 **Superior Court** (1966) 64 C2d 159, 176-177 noted a  
3 distinction between the trial court's power to admit or  
4 exclude psychiatric testimony and its power to order a  
5 psychiatric examination. The court ruled that Penal Code  
6 Section 1112 only curtailed the court's power to order a  
7 psychiatric examination and did not purport to act with  
8 regard to the court's power to admit psychiatric testimony:

9 "A reading of Ballard supports a distinction  
10 between the court's power to admit or exclude  
11 psychiatric testimony and the court's power to  
12 order a psychiatric examination. In Ballard the  
13 court first held that a trial judge can determine,  
14 in his discretion, whether to admit psychiatric  
15 testimony relative to the credibility of a sexual  
16 assault victim. (Ballard vs. Superior Court,  
17 supra, 64 Cal.2d at p. 175, 49 Cal.Rptr. 302, 410  
18 P.2d 838.) The court then turned to the question  
19 of the trial judge's power to order a psychiatric  
20 examination of a complaining witness in a sexual  
21 assault case. (Id., at pp. 175-177, 49 Cal.Rptr.  
22 302, 410 P.2d 838.) The court concluded that the  
23 trial judge did possess the requisite power to  
24 order the examination, and, again, the court left  
25 this decision to the judge's discretion. (Ibid.)  
26 Thus a two-step process was developed in which the  
27 court was to exercise its discretion twice: once  
28 to determine whether to order the examination and  
once to determine the admissibility of the results  
of the examination.

In passing Penal Code Section 1112 in 1980 the  
legislature overruled the holding in Ballard only  
with regard to the first step (see People vs.  
Haskett (1982) 30 Cal.3d 841, 859, fn. 7, 180  
Cal.Rptr. 640, 640 P.2d 776) but did not purport  
to act with regard to the second step concerning  
the admissibility of psychiatric testimony  
concerning the mental state of the complaining  
witness in a sex case.

Ordering a psychiatric examination for a witness  
is not tantamount to ruling on the admissibility  
of any evidence which may be generated as a result  
of that examination. While the constitutional  
change brought about by the passage of Proposition  
8 might well impact on any legislation which

1 purported to prevent the introduction of relevant  
2 evidence concerning the mental state of mind of a  
3 victim of sex crimes, the section has not effect  
4 upon Penal Code Section 1112 which does not deal  
with either the exclusion or the admission of such  
evidence." (**People vs. Hagerman** (1985), supra, at  
pp. 974-975.)

5 **ADMISSIBILITY**

6 In **People vs. Russel** (1968) 69 C2d 187, the California  
7 Supreme Court held it to be an abuse of discretion to  
8 exclude psychiatric testimony of the alleged child molest  
9 victim's mental or emotional condition as it effected her  
10 ability to tell the truth. The court held that its  
11 discretion should be exercised liberally in favor of the  
12 defendant (**People vs. Russell**, supra, p. 196).

13 **CONCLUSION**

14 The psychiatric evidence concerning the alleged victim  
15 in this case is not made inadmissible by Penal Code Section  
16 1112.

17 Dated:

18 Respectfully submitted,

19 \_\_\_\_\_  
20 Attorney for Defendant  
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