NY CLS CPLR R 4520

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service **>**

Civil Practice Law And Rules (Arts. 1 — 100) **>**

Article 45 Evidence (§§ 4501 — 4551)

R 4520. Certificate or affidavit of public officer.

Where a public officer is required or authorized, by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed, by him in the course of his official duty, and to file or deposit it in a public office of the state, the certificate or affidavit so filed or deposited is prima facie evidence of the facts stated.

History

Formerly § 4520, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

Notes

Prior Law

Earlier statutes: CPA § 367; CCP § 922.

Advisory Committee Notes

This rule is the same as former § 367 with minor language changes and the omission of the phrase “except where the effect thereof is declared or regulated by special provision of law,” which is unnecessary. The reference to an “exemplified copy” is not needed because CPLR rule 4539(a) provides for the use of properly authenticated copies.

Notes to Decisions

I. Under CPLR

1. Generally

Exhibits which were inadmissible under CPLR § 4520 should nevertheless have been admitted under common law “public document” or “official entries” exception to hearsay rule, but records so admitted could not be prima facie evidence of the facts contained therein, only some evidence for consideration by the trier of fact. Consolidated Midland Corp. v Columbia Pharmaceutical Corp., 42 A.D.2d 601, 345 N.Y.S.2d 105, 1973 N.Y. App. Div. LEXIS 4068 (N.Y. App. Div. 2d Dep't 1973).

Stamp “Certified True Copy” on insurance report was insufficient to constitute self-authentication under CLS CPLR §§ 4540(a) or 4520. Consol. Edison Co. of N.Y. v Allstate Ins. Co., 283 A.D.2d 322, 724 N.Y.S.2d 853, 2001 N.Y. App. Div. LEXIS 5364 (N.Y. App. Div. 1st Dep't 2001), aff'd, 98 N.Y.2d 208, 746 N.Y.S.2d 622, 774 N.E.2d 687, 2002 N.Y. LEXIS 1041 (N.Y. 2002).

Attendance teachers were not “public officers” within “public officer” exception to rule against hearsay. In re C., 91 Misc. 2d 875, 398 N.Y.S.2d 936, 1977 N.Y. Misc. LEXIS 2437 (N.Y. Fam. Ct. 1977).

Defendant could not be convicted of violating terms of his probation due to his subsequent conviction for misdemeanor assault and resisting arrest, where prosecutor attempted to prove later conviction by photocopy of certificate of conviction of town court in which defendant was convicted, together with photocopy of attorney’s certification; copy of certification was tantamount to no certification, and thus copy of certificate of conviction lacked attestation required by CLS CPLR § 4540. People v Sykes, 167 Misc. 2d 588, 638 N.Y.S.2d 1010, 1995 N.Y. Misc. LEXIS 671 (N.Y. Sup. Ct. 1995), aff'd, 225 A.D.2d 1093, 639 N.Y.S.2d 188, 1996 N.Y. App. Div. LEXIS 2995 (N.Y. App. Div. 4th Dep't 1996).

In breach of contract action arising out of summary suspension of anesthesiologist by defendant hospital, reports of Office of Professional Medical Conduct and Public Health Counsel were not admissible pursuant to public document exception to hearsay rule, as codified in CLS CPLR § 4520, as documents were neither certificates nor affidavits and contained opinions of witnesses who were not public officers; if such documents were admissible at all, it would be under broader common-law public document exception to hearsay rule and, if admitted, would not

constitute prima facie evidence of facts contained therein, but simply evidence that jury could accept or reject. Bogdan v Peekskill Community Hosp., 168 Misc. 2d 856, 642 N.Y.S.2d 478, 1996 N.Y. Misc. LEXIS 139 (N.Y. Sup. Ct. 1996).

2. Accident report

Even though elevator inspector's accident report was admissible as a public record in action by subcontractor's employee to recover for injuries sustained when hoist fell, where statement made by general contractor's superintendent to inspector and incorporated in report to the effect that hoist which could carry 20 men was carrying 22 men at time of accident was made by one not in same employment as entry-maker, the inspector, statement had to qualify independently for admission under recognized exception to hearsay rule. Kelly v Diesel Constr. Div. of Carl A. Morse, Inc., 35 N.Y.2d 1, 358 N.Y.S.2d 685, 315 N.E.2d 751, 1974 N.Y. LEXIS 1415 (N.Y. 1974).

Accident report prepared by a police department clerk who did not witness the accident and which consisted of statements made to the clerk by the injured party could not be admitted as a statement of a public officer because the statements in the report were not made by the entry-maker or by someone in the same employment as the entry-maker. Brown v Reece, 194 Misc. 2d 269, 753 N.Y.S.2d 825, 2003 N.Y. Misc. LEXIS 8 (N.Y. Civ. Ct. 2003).

3. Death certificate

Official death certificate stating cause of death is presumptive evidence of the facts therein alleged. Gioia v State, 22 A.D.2d 181, 254 N.Y.S.2d 384, 1964 N.Y. App. Div. LEXIS 2589 (N.Y. App. Div. 4th Dep't 1964).

In suit for wrongful death of plaintiff's spouse, evidence of cause of death was not speculative and insufficient because plaintiff relied primarily on death certificate and coroner's report as prima facie proof of causation, since CLS Public Health Law § 4103 provides that properly

certified death certificate is prima facie evidence of facts stated therein, and certificate, as supported by coroner's report, was therefore properly accepted as proof of causation under CPLR § 4520. Stein v Lebowitz-Pine View Hotel, Inc., 111 A.D.2d 572, 489 N.Y.S.2d 635, 1985 N.Y. App. Div. LEXIS 51612 (N.Y. App. Div. 3d Dep't), app. denied, 65 N.Y.2d 611, 494 N.Y.S.2d 1026, 484 N.E.2d 1053, 1985 N.Y. LEXIS 16088 (N.Y. 1985).

4. Government agency reports, generally

Study of motorcycle side stand retraction undertaken by National Highway Traffic and Safety Administration did not fall within scope of public document exception to hearsay rule where study was preliminary in nature, no public findings were released and no recalls were issued, there was very little detail provided as to actual test conducted on various motorcycle models, and "observations" contained in study were based, in part, on owner surveys and accident reports, neither of which were admissible. Cramer v Kuhns, 213 A.D.2d 131, 630 N.Y.S.2d 128, 1995 N.Y. App. Div. LEXIS 8172 (N.Y. App. Div. 3d Dep't), app. dismissed, 87 N.Y.2d 860, 639 N.Y.S.2d 312, 662 N.E.2d 793, 1995 N.Y. LEXIS 4922 (N.Y. 1995).

City Civil Court's refusal to admit City Housing Authority's evidence of resolutions governing termination of tenants in its housing projects, certificate of Authority's secretary attesting to the validity of its resolutions, and documentary evidence of the Authority's administrative determination of the termination of tenancy was prejudicial and reversible error. New York City Housing Authority v Reaves, 46 Misc. 2d 645, 260 N.Y.S.2d 299, 1965 N.Y. Misc. LEXIS 1851 (N.Y. App. Term 1965).

United States Environmental Protection Agency's "Final Rule on Asbestos," published in Federal Register in July 1989, was not admissible in asbestos litigation under CLS CPLR § 4520 since no law authorized or required EPA to file anything with state, and Final Rule was not simple certificate or affidavit but lengthy document containing facts, opinions, conclusions, summaries and regulations. In re Eighth Judicial Dist. Asbestos Litigation, 152 Misc. 2d 338, 576 N.Y.S.2d 757, 1991 N.Y. Misc. LEXIS 627 (N.Y. Sup. Ct. 1991).

Public Transportation Safety Board's investigation and accident resolution reports were not sufficiently trustworthy to be admitted under CLS CPLR § 4520 public documents exception to rule against hearsay in personal injury action arising from train accident, where neither report set forth who performed investigation, skill and experience of investigators, and whether testimony was adduced at hearing. Kaiser v Metropolitan Transit Auth., 170 Misc. 2d 321, 648 N.Y.S.2d 248, 1996 N.Y. Misc. LEXIS 362 (N.Y. Sup. Ct. 1996).

Submissions of a joint U.S.-Canada report and New York State Public Service reports concerning a power outage were made pursuant to a directive from the former President of the United States and by directive of the former Governor of New York, appeared to have been thoroughly conducted by skilled professionals, and were immensely detailed; thus the submissions were proper in a summary judgment motion. Fruit & Vegetable Supreme, Inc. v The Hartford Steam Boiler Inspection & Ins. Co., 905 N.Y.S.2d 864, 28 Misc. 3d 1128, 244 N.Y.L.J. 20, 2010 N.Y. Misc. LEXIS 2937 (N.Y. Sup. Ct. 2010).

5. —Department of Motor Vehicles (DMV) forms, records and the like

In an action brought by a passenger for injuries sustained when the car in which she was riding collided with a leased car, an order adjudging that the leased car was insured by appellant-insurer would be reversed where the introduction into evidence of a motor vehicle department form on the subject of insurance had been reversible error in that the form, which was not a public document, represented the results of a search conducted by an employee of the department, in that the best evidence of the contract of insurance would have been the policy itself, and in that the court had not considered whether the form would be admissible as a business record. In re Zurich-American Ins. Co., 89 A.D.2d 542, 452 N.Y.S.2d 633, 1982 N.Y. App. Div. LEXIS 17588 (N.Y. App. Div. 1st Dep't 1982).

For purposes of elevating charge under CLS Veh & Tr § 1192(3) to class D felony, Department of Motor Vehicles' abstract of driving record qualified as admissible evidence of defendant's prior convictions for driving while under influence of alcohol or drugs under common-law public

documents exception to hearsay rule; under circumstances, it was not necessary for court to decide whether abstract could also qualify for admission under much narrower statutory exception (CLS CPLR § 4520). Strict compliance with rules requiring authentication of public documents was lacking, and thus Department of Motor Vehicles (DMV) abstract of driving record was not admissible to prove defendant's prior convictions for driving while under influence of alcohol or drugs, where attestation by DMV Commissioner and state seal were preprinted on blank forms, state seal was not embossed on document in manner resisting forgery, and data regarding defendant's driving record was placed on document after seal was affixed. People v Smith, 258 A.D.2d 245, 697 N.Y.S.2d 783, 1999 N.Y. App. Div. LEXIS 9962 (N.Y. App. Div. 4th Dep't), app. denied, 94 N.Y.2d 829, 702 N.Y.S.2d 600, 724 N.E.2d 392, 1999 N.Y. LEXIS 4320 (N.Y. 1999).

New York Department of Motor Vehicles form MV-104, required to be filed following accident in which person is killed or injured or damage exceeds $600, does not constitute prima facie evidence of insurance coverage so as to shift burden of proving lack of coverage to insurer since (1) form is unsupported by any independent proof of insurance coverage, (2) form is not certificate or affidavit as to fact ascertained or act performed by public officer in course of official duty (CLS CPLR § 4520), and (3) form is unlike police report containing insurance information based on insurance identification card, which does shift burden of proof to named insurer. Mona Leasing, Inc. v Travelers Indem. Co., 148 Misc. 2d 877, 564 N.Y.S.2d 665, 1990 N.Y. Misc. LEXIS 636 (N.Y. Dist. Ct. 1990).

Document entitled "Driver License Suspension Order," which was dated and addressed to defendant and indicated that his license was suspended for operating without insurance, qualified as public record under CLS CPLR § 4520, and constituted prima facie evidence that defendant's license was suspended as of date stated therein, for purposes of prosecution under CLS Veh & Tr § 511(2)(a)(iv). In prosecution for second degree aggravated unlicensed operation of motor vehicle, Department of Motor Vehicles abstract of driving record for defendant, which was certified and bore reproduction of signature of Commissioner of Motor

Vehicles, was properly authenticated and qualified as public record under CLS CPLR § 4520. People v Pabon, 167 Misc. 2d 214, 640 N.Y.S.2d 421, 1995 N.Y. Misc. LEXIS 684 (N.Y. City Crim. Ct. 1995).

In prosecution for aggravated unlicensed operation of motor vehicle, defendant was entitled to trial order of dismissal based on insufficiency of evidence where Department of Motor Vehicles (DMV) abstract of his driving record did not qualify as valid certificate by DMV Commissioner pursuant to CLS CPLR § 4540, and thus was not admissible under CLS CPLR § 4520, because official DMV seal was preprinted on otherwise blank forms before any data was placed thereon. People v Watson, 167 Misc. 2d 441, 634 N.Y.S.2d 634, 1995 N.Y. Misc. LEXIS 518 (N.Y. City Crim. Ct. 1995).

In proceeding against defendant who allegedly violated terms of his probation, 2 certificates of conviction for driving while impaired, from county and town courts in which defendant was convicted, were properly admitted in evidence under CLS CPLR § 4520 without further attestation, as they were original documents authorized by “special provision of law” that required no attestation. People v Sykes, 167 Misc. 2d 588, 638 N.Y.S.2d 1010, 1995 N.Y. Misc. LEXIS 671 (N.Y. Sup. Ct. 1995), aff'd, 225 A.D.2d 1093, 639 N.Y.S.2d 188, 1996 N.Y. App. Div. LEXIS 2995 (N.Y. App. Div. 4th Dep't 1996).

In prosecution for third degree aggravated unlicensed operation of motor vehicle, Department of Motor Vehicles abstract of defendant’s driving record, along with notice of conviction and license suspension, were admissible in evidence under CLS CPLR § 4520 and common-law public document exception to hearsay rule. People v Michaels, 174 Misc. 2d 982, 667 N.Y.S.2d 646, 1997 N.Y. Misc. LEXIS 580 (N.Y. City Crim. Ct. 1997).

In prosecution for felony driving while under influence of alcohol, facsimile of driving record abstract maintained by Department of Motor Vehicles (DMV) was legally sufficient to establish defendant’s identity and prior convictions for driving while intoxicated within preceding 10 years, where official seal and certification of DMV records were placed on document simultaneously with driving record information, which satisfied authentication requirement of public records

exception to hearsay rule. People v Baker, 183 Misc. 2d 650, 705 N.Y.S.2d 846, 2000 N.Y. Misc. LEXIS 48 (N.Y. County Ct. 2000).

6. Proof of service of legal papers

In prosecution for second degree criminal contempt for violating temporary order of protection, detective's allegation that defendant was served with order of protection was admissible under at least 2 hearsay rule exceptions, and thus non-hearsay requirement of CLS CPL § 100.40(1)(c) was met, where (1) complainant had shown detective certified copy of order containing defendant's signed acknowledgement of receipt of service, which court clerk was required to effect under CLS CPL § 530.13(6), and (2) defendant had admitted to detective that he was served with order. People v Casey, 95 N.Y.2d 354, 717 N.Y.S.2d 88, 740 N.E.2d 233, 2000 N.Y. LEXIS 3522 (N.Y. 2000).

Order adjudicating, by default, that mother's 2 children were permanently neglected and terminating mother's parental rights would not be vacated on basis of her conclusory assertions that she had not been served with permanent neglect petition and that she had meritorious defense where (1) process server's affidavit, which indicated that mother had been personally served and contained information required by CLS CPLR § 306(a) and (b), was prima facie evidence of proper service, (2) mother did not specifically refute veracity or content of affidavit of service, and (3) neither her affidavit nor answer accompanying her application to vacate recited any facts or controverted allegations in petition so as to support her claim of meritorious defense. In re Shaune TT., 251 A.D.2d 758, 674 N.Y.S.2d 457, 1998 N.Y. App. Div. LEXIS 6748 (N.Y. App. Div. 3d Dep't 1998).

7. Real estate title papers

Water power rights resulting from river dam were appurtenant to parcel south of river, rather than to condemned parcel located north of river and formerly owned by claimant seeking just compensation under CLS EDPL § 503, where (1) in late 1800s, water power rights associated

with north parcel were severed from land and conveyed to owner of south parcel, who operated dam, (2) title examiner, after searching all relevant conveyances, concluded that 1930 deed relied on by claimant did not reveal any grant of water rights to claimant or its predecessor, (3) affidavit of title insurance firm and certified abstract of title under CLS CPLR §§ 4520 and 4523 declared that claimant did not obtain any water power rights by 1950 conveyance of transmission corridor on north side of river, and (4) absence of reference in deed to grantor's "successors and assigns" did not preclude finding in title abstract that easement was conveyed to south shore owner for continued presence of dam and its flooding needs. In re Acquisition of Real Prop. by Warrensburg Hydro Power Ltd. Pshp., 263 A.D.2d 822, 694 N.Y.S.2d 506, 1999 N.Y. App. Div. LEXIS 8309 (N.Y. App. Div. 3d Dep't 1999).

8. Substance abuse test analysis

Defendant was entitled to reversal of convictions for driving with more than .10 percent alcohol in blood and for driving while intoxicated where People made no effort to authenticate evidence of calibration of breathalyzer machine used to test defendant, as required by CLS CPLR §§ 4518 and 4520, and by common law public documents exception to hearsay rule; while these various exceptions to hearsay rule are intended to dispense with unmanageable requirement that various public officers who perform tests and prepare documents be called as witnesses, defendant's right of confrontation requires strict compliance with rules requiring authentication. People's calibration exhibits purporting to show, by way of foundation, that breathalyzer machine was operating properly during test of intoxicated defendant were inadmissible as public documents exception to hearsay rule, under CLS CPLR § 4520, where People made no effort to authenticate exhibits; administrative rules and regulations of Department of Health § 59.5 relied on by People to supply basis for admissibility under § 4520 refers only to maintaining adequate calibration records of breathalyzer instruments, not to procedures for authentication. People v Garneau, 120 A.D.2d 112, 507 N.Y.S.2d 931, 1986 N.Y. App. Div. LEXIS 59221 (N.Y. App. Div. 4th Dep't 1986).

Official reports of drug analyses are admissible without the testimony of the analyst. Certified chemist's report on heroin content of seized substance was admissible, without the testimony of the chemist, in juvenile delinquency proceeding under the general business record exception to the hearsay rule as well as the exception for records certified by employees of a department or bureau of a municipal corporation and the exception for certificates of public officers. In re G., 80 Misc. 2d 517, 363 N.Y.S.2d 999, 1975 N.Y. Misc. LEXIS 2206 (N.Y. Fam. Ct. 1975).

In a prosecution for operating a motor vehicle while under the influence of alcohol or drugs, documents consisting of records of test results regarding the reliability of a breathalyzer test that include information concerning the test date, the individual who conducted the test, the material tested, the test conducted and the test results, are admissible under the public records exception to the hearsay rule either pursuant to CPLR 4520 or the much broader common-law exception for official written statements; as there was no demonstration of compliance with CPLR 4520, nor a request that the court take judicial notice thereof, the test records, relating to calibration of the breathalyzer, the analysis of ampules and the analysis of simulator solution, are admissible under the common-law exception since a wide variety of governmental records regarding tests similar to those involved in this case have been found to be admissible, and, therefore, so too should these records. People v Hoats, 102 Misc. 2d 1004, 425 N.Y.S.2d 497, 1980 N.Y. Misc. LEXIS 2050 (N.Y. County Ct. 1980).

In trial for driving while intoxicated in violation of CLS Veh & Tr § 1192(2) in which defendant moved for suppression of breathalyzer results on ground that certain chemical products used in breathalyzer machine could not be shown to be scientifically reliable, defendant would not be permitted to offer evidence of document prepared by Auditor General of Pennsylvania, which criticized procedures at plant where chemical products were produced, since document was neither business record within meaning of CLS CPLR § 4518(a) nor public record within meaning of CLS CPLR § 4520; such document was investigative report filled with opinions and conclusions. People v Serrano, 142 Misc. 2d 1087, 539 N.Y.S.2d 845, 1989 N.Y. Misc. LEXIS 167 (N.Y. Crim. Ct. 1989).

9. Other and miscellaneous documents

At a predicate sentence hearing to determine persistent violent felony offender status under N.Y. Penal Law §§ 70.08, 70.04, defendant did not have the right to confront the author of a report certifying that he had compared two fingerprint cards of an individual with defendant's name with two prior convictions, bearing the identical New York State Identification Number, and that, in his opinion, the two fingerprint impressions were those of the same individual because Crawford only applied to testimonial hearsay at trial and N.Y. Crim. Proc. Law § 400.15(7)(a) did not operate in contradiction to that determination; the affidavit at issue based on fingerprint comparisons was admissible at the predicate sentencing hearings under N.Y. Crim. Proc. Law § 60.60(2) and N.Y. C.P.L.R. § 4520. People v Leon, 10 N.Y.3d 122, 855 N.Y.S.2d 38, 884 N.E.2d 1037, 2008 N.Y. LEXIS 276 (N.Y.), cert. denied, 554 U.S. 926, 128 S. Ct. 2976, 171 L. Ed. 2d 900, 2008 U.S. LEXIS 5162 (U.S. 2008).

Certificate from New York State Division of Criminal Justice Services, comparing defendant's fingerprints taken when he was arrested on present charge with those taken when he was arrested on similar charge one year earlier, was properly admitted under public documents exception to hearsay rule, where prosecutor stated that Division of Criminal Justice Services must classify fingerprints on receipt from police agency, search its records for information regarding existence of criminal record of person bearing those fingerprints, and transmit such information to forwarding police agency. People v Hudson, 237 A.D.2d 943, 655 N.Y.S.2d 219, 1997 N.Y. App. Div. LEXIS 3541 (N.Y. App. Div. 4th Dep't), app. denied, 89 N.Y.2d 1094, 660 N.Y.S.2d 388, 682 N.E.2d 989, 1997 N.Y. LEXIS 1982 (N.Y. 1997).

Departures from the fair and uniform treatment of persons who repeatedly violate parking restrictions should not occur in the absence of some compelling circumstance or clear legal justification; accordingly, an action for repeated violations of town parking restrictions by a government member of the United Nations by the same Cadillac bearing diplomatic license plates, will not be dismissed on the basis of the receipt by the court, in response to an official court notification of the violations, of a request to drop the proceedings that was made in a

mimeographed form letter from the United States Mission to the United Nations, which stated that the car was registered to a member of a permanent mission to the United Nations, was used on official business when the violations occurred, and that said mission is entitled to diplomatic immunity (see 61 US Stat 756; 59 US Stat 669), since such immunity is provided only for acts performed by foreign representatives to international organizations in their official capacity and falling within their functions as such representatives; therefore, the granting of immunity is not a political question but rather a justiciable controversy which requires interpretation of a Federal statute (61 US Stat 756) and its application to particular facts, such that the afore-mentioned letter, which does not indicate the official status of the unknown driver, which could, at trial, properly be excluded as hearsay, which fails to comply with CPLR 4520 (dealing with the evidentiary value of certificates or affidavits of public officers), and which has not been shown to be a public document entitled to the common-law exception to the hearsay rule, is an insufficient showing that the violations are protected under the statute and is no support for dismissal of the action. People v "John Doe", 101 Misc. 2d 789, 421 N.Y.S.2d 1015, 1979 N.Y. Misc. LEXIS 2764 (N.Y. J. Ct. 1979).

Computer printout reciting defendant’s criminal history attached to a misdemeanor complaint charging bail jumping was insufficient to constitute an information; the printout was pure hearsay, that was not certified as a business or public record, and the records on the underlying charges as to which defendant had originally been released on bail had remained sealed ever since that proceeding had been dismissed for failure to provide a speedy trial. People v Perez, 195 Misc. 2d 171, 757 N.Y.S.2d 711, 2003 N.Y. Misc. LEXIS 202 (N.Y. City Crim. Ct. 2003).

In a driving while intoxicated case, the trial court properly admitted into evidence electronic records relating to the calibration and maintenance of the breath testing device used by police; as the records never existed as paper documents, the best evidence rule, N.Y. C.P.L.R. 4539, did not apply and they were admissible as business records under N.Y. C.P.L.R. 4518(a), with or without certification or authentication. People v Rath, 975 N.Y.S.2d 567, 41 Misc. 3d 869, 2013 N.Y. Misc. LEXIS 4249 (N.Y. Dist. Ct. 2013).

Exhibit that was downloaded, printed, and copied from the New York State Office of Real Property Services (ORPS) SalesWeb was inadmissible under the N.Y. C.P.L.R. 4520 hearsay exception as an association failed to provide an affidavit of a public officer, there was not sufficient independent indicia of reliability, and it could not be shown that the RP-5217 forms, upon which the ORPS SalesWeb was based, had to be filed as a public record; N.Y. Real Prop. Law § 333 and N.Y. Real Prop. Tax Law §§ 202(2) and 738 did not provide proof of a statutory requirement that mandated the filing of RP-5217 forms. Miriam Osborn Mem. Home Assn. v Assessor of City of Rye, 800 N.Y.S.2d 909, 9 Misc. 3d 1019, 234 N.Y.L.J. 45, 2005 N.Y. Misc. LEXIS 1824 (N.Y. Sup. Ct. 2005).

Misdemeanor complaint charging defendants with attempted unauthorized practice of a profession under N.Y. Penal Law § 110.00 and N.Y. Educ. Law § 6512(1) could not be converted to an information under N.Y. Crim. Proc. Law § 170.65(1) because failure to display a license to practice massage therapy was not presumptive evidence of a failure to be licensed; records from the State Department of Education were required to establish a prima facie case and would be admissible under the business records exception in N.Y. C.P.L.R. 4518(a), (c) or the public records exception in N.Y. C.P.L.R. 4520. People v Pao Fun, 840 N.Y.S.2d 295, 16 Misc. 3d 917, 238 N.Y.L.J. 19, 2007 N.Y. Misc. LEXIS 4775 (N.Y. City Crim. Ct. 2007).

Counsel’s failure to offer into evidence foreign police documents indicating that a prisoner was in the Dominican Republic on the day of a murder that occurred in New York constituted ineffective assistance of counsel because (1) the alibi documents were probably admissible under the public records exception to the hearsay rule under N.Y. C.P.L.R. § 4520 and the common law, but counsel did not even attempt to lay a proper foundation; (2) counsel likely could have met the foundational requirements of the business record exception under N.Y. C.P.L.R. § 4518 by calling an expert in Dominican law enforcement; (3) counsel could have argued that the documents were admissible under the residual hearsay exception; (4) pursuant to N.Y. C.P.L.R. § 4542(b) and N.Y. C.P.L.R. § 4543, the documents could have been authenticated even if counsel could not obtain final certifications; and (5) there was a reasonable probability that the

prisoner would have been acquitted if counsel had done his job competently. Garcia v Portuondo, 459 F. Supp. 2d 267, 2006 U.S. Dist. LEXIS 91894 (S.D.N.Y. 2006).

II. Under Former Civil Practice Laws

10. Generally

The law presumes that all officers entrusted with the custody of public files and records will perform their official duty by keeping the same safely in their offices, so that where a statute required vault permits to be in writing the presumption is that if any such permit as was claimed had been granted it would have been entered or filed in the proper office, and failure to find it there raised a presumption, until rebutted, that no such document was ever in existence. Deshong v New York, 176 N.Y. 475, 68 N.E. 880, 176 N.Y. (N.Y.S.) 475, 14 N.Y. Ann. Cas. 169, 1903 N.Y. LEXIS 827 (N.Y. 1903).

The requirements of the statute must be strictly followed. Rogers v Jackson, 1838 N.Y. LEXIS 103 (N.Y. Sup. Ct. May 1, 1838).

11. Facts of which certificate is evidence

The report or certificate of an officer is evidence only of facts which, by law, he is authorized to certify. Board of Water Comm'rs v Lansing, 45 N.Y. 19, 45 N.Y. (N.Y.S.) 19, 1871 N.Y. LEXIS 92 (N.Y. 1871).

A death certificate is admissible in this state as prima facie evidence of the facts therein stated. Brownrigg v Boston & A. R. Co., 8 A.D.2d 140, 185 N.Y.S.2d 977, 1959 N.Y. App. Div. LEXIS 8371 (N.Y. App. Div. 1st Dep't 1959) (death certificate would have supplied necessary proof of causes of death; failure of such proof caused reversal).

Certification that State Traffic Commission has not fixed maximum speed rate greater than fifty miles per hour on or along any New York highway is admissible in evidence, even on appeal, to

sustain conviction for speeding. People v Martin, 136 N.Y.S.2d 777, 207 Misc. 127, 1955 N.Y. Misc. LEXIS 3382 (N.Y. County Ct. 1955).

12. Impeachment of certificate

Canvasser's certificate of election may be impeached by oral evidence. People ex rel. Stemmler v McGuire, 2 Hun 269 (N.Y.), aff'd, 60 N.Y. 640, 60 N.Y. (N.Y.S.) 640, 1875 N.Y. LEXIS 255 (N.Y. 1875).

13. Certificates of particular officers

Autopsy report of county medical examiner, who died before trial, was admissible, despite fact that such report was not open to public inspection. People v Nisonoff, 293 N.Y. 597, 59 N.E.2d 420, 293 N.Y. (N.Y.S.) 597, 1944 N.Y. LEXIS 1268 (N.Y. 1944), reh'g denied, 294 N.Y. 696, 60 N.E.2d 846, 294 N.Y. (N.Y.S.) 696, 1945 N.Y. LEXIS 895 (N.Y. 1945), cert. denied, 326 U.S. 745, 66 S. Ct. 22, 90 L. Ed. 445, 1945 U.S. LEXIS 1793 (U.S. 1945).

Inventory of assets and lists of claims verified by superintendent of banks and filed in office of clerk of county were of the character of public statements and open to public inspection, and were admissible in evidence. Richards v Robin, 178 A.D. 535, 165 N.Y.S. 780, 1917 N.Y. App. Div. LEXIS 6525 (N.Y. App. Div. 1917).

On a certiorari proceeding to review the determination of a board of supervisors, it was error for the board to refuse to admit in evidence the duplicate original of an audit made by the State Department of Highways and filed in the office of the county superintendent of highways and the statutory report of the county treasurer filed with the board of supervisors. Loughran v Markle, 242 A.D. 331, 275 N.Y.S. 721, 1934 N.Y. App. Div. LEXIS 6061 (N.Y. App. Div. 1934), aff'd, 266 N.Y. 601, 195 N.E. 219, 266 N.Y. (N.Y.S.) 601, 1935 N.Y. LEXIS 1476 (N.Y. 1935).

Police records, reciting that policeman's disability was incurred in performance of duty without his fault, was hearsay and conclusory. Bothner v Keegan, 275 A.D. 470, 89 N.Y.S.2d 288, 1949 N.Y. App. Div. LEXIS 3799 (N.Y. App. Div. 1949).

Toxicologist's report, made pursuant to law and in regular course of business, as to quantity of alcohol found in brain of deceased, was admissible in action for negligent death due to bus injury. Iovino v Green Bus Lines, 277 A.D. 1002, 100 N.Y.S.2d 148, 1950 N.Y. App. Div. LEXIS 4236 (N.Y. App. Div. 1950).

Coroner's report, based on personal observation of road conditions and warning signs, was admissible. Petrozak v State, 69 N.Y.S.2d 809, 189 Misc. 809, 1947 N.Y. Misc. LEXIS 2315 (N.Y. Ct. Cl. 1947).

Records recited in affidavit of inspector of housing and buildings, made in regular course of his duties, and attached to and made part of his complaint for violating Administrative Code of City of New York, were admissible in evidence. People v Lederle, 132 N.Y.S.2d 693, 206 Misc. 244, 1954 N.Y. Misc. LEXIS 2672 (N.Y. Spec. Sess. 1954), aff'd, 285 A.D. 974, 139 N.Y.S.2d 915, 1955 N.Y. App. Div. LEXIS 6339 (N.Y. App. Div. 1955).

Certification that State Traffic Commission has not fixed maximum speed rate greater than fifty miles per hour on or along any New York highway is admissible in evidence, even on appeal, to sustain conviction for speeding. People v Martin, 136 N.Y.S.2d 777, 207 Misc. 127, 1955 N.Y. Misc. LEXIS 3382 (N.Y. County Ct. 1955).

CPA § 367 was inapplicable to police speedometer test records because they were not deposited in a public office. People ex rel. Katz v Jones, 10 Misc. 2d 1067, 171 N.Y.S.2d 325, 1958 N.Y. Misc. LEXIS 3814 (N.Y. Magis. Ct. 1958).

A coroner's certificate properly received in evidence in action for wrongful death. Hunter v Derby Foods, Inc., 110 F.2d 970, 17 Ohio Op. 384, 1940 U.S. App. LEXIS 4710 (2d Cir. N.Y. 1940).

Research References & Practice Aids

Cross References:

Certificates relating to not-for-profit corporations, CLS N-PCL § 106.

Federal Aspects:

Proof of official record in United States District Courts, USCS Court Rules, Federal Rules of Civil Procedure, Rule 44.

Public records and reports as exception to hearsay rule in United States Courts, USCS Court Rules, Federal Rules of Evidence, Rule 803(8).

Documentary evidence, 28 USCS §§ 1731 et seq.

Jurisprudences:

33 NY Jur 2d Criminal Law §§ 1942., 1943. .

57 NY Jur 2d Evidence and Witnesses § 109. .

58 NY Jur 2d Evidence and Witnesses §§ 497., 501., 503., 505. .

67A NY Jur 2d Inspection Laws § 10. .

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Evidence symposium. 52 Cornell L.Q. 177.

Treatises

Matthew Bender’s New York Civil Practice:

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LexisNexis Practice Guide New York e-Discovery and Evidence § 15.08. CHECKLIST: Authenticating ESI.

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1 New York Practice Guide: Probate and Estate Administration § 20.06.

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Warren’s Weed: New York Real Property Ch. 50. Evidence and Proof of Facts in Real Property Actions and Proceedings.

Matthew Bender’s New York Evidence:

1 Bender's New York Evidence § 118.01. General Principles of Authenticating Public and Official Documents.

1 Bender's New York Evidence § 118.02. Authentication of Public and Official Documents Dealing with Natural Persons.

1 Bender's New York Evidence § 118.07. Authentication of Reports of Official Investigations.

3 Bender's New York Evidence § 149.02. Scope of the Business Records Rule.

Annotations:

Admissibility of tape recording or transcript of “911” emergency telephone call. 3 ALR5th 784.

Admissibility, over hearsay objection, of police observations and investigative findings offered by government in criminal prosecution, excluded from public records exception to hearsay rule under Rule 803(8)(B) or (C), Federal Rules of Evidence. 56 ALR Fed 168.

Matthew Bender’s New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

Texts:

1 New Appleman New York Insurance Law § 10.02.

Jonakait, Baer, Jones, & Imwinkelried, New York Evidentiary Foundations (Michie), Ch 10 .The Hearsay Rule, its Exemptions and its Exceptions.

3 New York Trial Guide (Matthew Bender) §§ 40.32, 40.51, 40.52, 40.73.

Hierarchy Notes:

NY CLS CPLR, Art. 45