NY CLS CPLR R 4518

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New York

Consolidated Laws Service **>**

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

Article 45 Evidence (§§ 4501 — 4551)

R 4518. Business records

(a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. An electronic record, as defined in section three hundred two of the state technology law, used or stored as such a memorandum or record, shall be admissible in a tangible exhibit that is a true and accurate representation of such electronic record. The court may consider the method or manner by which the electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller’s or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is

reasonable. This subdivision shall not apply to any proceeding in a surrogate's court nor in any action instituted by or on behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except that in a proceeding pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital, such certified hospital bills are prima facie evidence of the fact of services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouse as that term is defined by paragraph (thirteen) of subsection (a) of section 7—102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouse providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the warehouse is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision. Where a hospital record is located in a jurisdiction other than this state, admissibility under this subdivision may be established by either a certification or

authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state or by an employee delegated for that purpose, or by a qualified physician.

(d) Any records or reports relating to the administration and analysis of a genetic marker or DNA test, including records or reports of the costs of such tests, administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law are admissible in evidence under this rule and are prima facie evidence of the facts contained therein provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee delegated for that purpose, or by a qualified physician. If such record or report relating to the administration and analysis of a genetic marker test or DNA test or tests administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law indicates at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall, if unrebutted, establish the paternity of and liability for the support of a child pursuant to articles four and five of the family court act.

(e) Notwithstanding any other provision of law, a record or report relating to the administration and analysis of a genetic marker test or DNA test certified in accordance with subdivision (d) of this rule and administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law is admissible in evidence under this rule without the need for foundation testimony or further proof of authenticity or accuracy unless objections to the record or report are made in writing no later than twenty days before a hearing at which the record or report may be introduced into evidence or thirty days after receipt of the test results, whichever is earlier.

(f) Notwithstanding any other provision of law, records or reports of support payments and disbursements maintained pursuant to title six-A of article three of the social services law by the office of temporary and disability assistance or the fiscal agent under contract to the office for the provision of centralized collection and disbursement functions are admissible in evidence under this rule, provided that they bear a certification by an official of a social services district attesting to the accuracy of the content of the record or report of support payments and that in attesting to the accuracy of the record or report such official has received confirmation from the office of temporary and disability assistance or the fiscal agent under contract to the office for the provision of centralized collection and disbursement functions pursuant to section one hundred eleven-h of the social services law that the record or report of support payments reflects the processing of all support payments in the possession of the office or the fiscal agent as of a specified date, and that the document is a record or report of support payments maintained pursuant to title six-A of article three of the social services law. If so certified, such record or report shall be admitted into evidence under this rule without the need for additional foundation testimony. Such records shall be the basis for a permissive inference of the facts contained therein unless the trier of fact finds good cause not to draw such inference.

(g) Pregnancy and childbirth costs. Any hospital bills or records relating to the costs of pregnancy or birth of a child for whom proceedings to establish paternity, pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act or section one hundred eleven-k of the social services law have been or are being undertaken, are admissible in evidence under this rule and are prima facie evidence of the facts contained therein, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or the state or by an employee designated for that purpose, or by a qualified physician.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1982, ch 695, § 3; L 1983, ch 311, § 1; L 1984, ch 792, § 3; L 1992, ch 381, § 1; L 1994, ch 170, § 350, eff June 15, 1994; L 1995, ch 81, § 236, eff July 1, 1995; L 1997, ch 398, §§ 87-89, eff Nov 11, 1997; L 2002, ch 136, § 1, eff July 23, 2002; L 2005, ch 741, § 1, eff Oct 18, 2005; L 2007, ch 601, § 10, eff Aug 15, 2007; L 2017, ch 229, § 1, effective August 21, 2017; L 2018, ch 237, § 5, effective August 24, 2018.

Annotations

Notes

Prior Law:

Earlier statutes: CPA §§ 373, 374–a; CCP § 929.

Editor's Notes:

Laws 1994, ch 170, §§ 379 andd 564, sub 43, eff June 15, 1994 and June 9, 1994, respectively, provide as follows:

§ 379. Notwithstanding any inconsistent provision of law, the commissioners of health, social services and tax and finance are authorized to promulgate on an emergency basis any regulation they determine necessary to implement any provision of sections three hundred fifty through three hundred seventy-eight of this act on its effective date, provided that such regulations shall not be required for the provisions of sections three hundred fifty through three hundred seventy-eight of this act to have full force and effect.

§ 564. This act shall take effect immediately provided, however, that:

43. Sections three hundred fifty through three hundred sixty-two and three hundred sixty-four through three hundred sixty-six of this act shall take effect June 15, 1994; and section three hundred seventy-eight of this act shall be deemed to have been in full force and effect from and after April 1, 1994, provided that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by sections three

hundred fifty through three hundred seventy-nine of this act and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law.

Laws 1995, ch 81, § 246 (in part), eff June 20, 1995, provides as follows:

§ 246. This act shall take effect immediately, provided that:

17. The commissioners of social services, taxation and finance, health, labor and motor vehicles and any appropriate council shall be authorized to promulgate regulations on an emergency basis to ensure the implementation of this act and may take any steps necessary to implement this act prior to its effective date;.

17-a. The provisions of this act shall become effective notwithstanding the failure of the commissioner of health, or the commissioner of social services, or any council to adopt or amend or promulgate regulations implementing this act;.

Laws 1997, ch 398, §§ 1, 147, eff Jan 1, 1998, provide as follows:

Section 1. The legislature hereby finds and declares:

It is essential that New York state’s child support enforcement program meet the needs of children, including providing for the timely and efficient establishment of paternity and child support orders and the collection of child support payments.

It is also essential that New York state meet the child support requirements contained in the federal Personal Responsibility and Work Opportunity Reconciliation Act.

In recognition of these goals, we hereby enact a number of measures to strengthen New York state’s child support system, including establishing a cost of living adjustment process to ensure that child support order amounts keep pace with inflation. In addition, we have determined that state and local child support agencies should have additional enforcement remedies and improved paternity establishment measures. Finally, we fulfill federal requirements by adopting

several initiatives, including the Uniform Interstate Family Support Act, establishing a computerized state case registry and making improvements to New York state's new hire reporting program. These changes and others contained in this legislation are intended to help families by ensuring that New York state's children receive the child support that they deserve.

§ 147. Notwithstanding any provision of law to the contrary, the commissioners of social services, taxation and finance, health, labor and motor vehicles and the chair of the workers' compensation board, and any appropriate entity of the state, shall be authorized to promulgate regulations on an emergency basis to ensure the implementation of this act and may take any steps necessary to implement this act prior to its effective date.

2002 Recommendations of the Advisory Committee on Civil Practice:

The Committee proposes an amendment to CPLR 4518 relating to the admissibility into evidence of computer-generated business records. The proposed amendment would add two new sentences in subdivision (a) of rule 4518, which would expressly permit the introduction into evidence of an electronic record as defined in section 102 of the State Technology Law, in any tangible format that accurately represents the content of such an electronic record.

The proposed amendment maintains the requirement that the electronic record be used or stored as a memorandum or record of a business act, transaction, occurrence or event. Further, such a record still would have to be made in the regular course of business, and, in accordance with the standard of admissibility for all business records, it also is required that it be the regular course of such business to make such a record at the time of transaction.

Thus, the amendment seeks to treat documents or other exhibits derived from electronic records in the same manner as more traditional business records. However, the amendment expands on the impact of the State Technology Law by specifically authorizing the introduction of exhibits that are derivative of the electronic record, provided that the exhibit is in a format that is an accurate and trustworthy representation of such electronic record. Under the amendment, an admissible document or other exhibit - even one prepared for litigation purposes outside the

normal course of business - may be derived from an electronic record maintained in the ordinary course of business. The rule would allow proof of information contained in electronic records without the production of the electronic medium on which the electronic record is stored. Thus, for database and other kinds of electronic records, there would be no need to produce the hard drive or archival copy that may have been created in the ordinary course of business, and which may contain much extraneous or even privileged information. However, recognizing that the actual business record on the recording media used in the ordinary course of business may not be produced in court, the court may consider the method or manner by which the electronic record was stored, maintained or retrieved, in determining that the proposed exhibit is trustworthy and accurate solely with respect to its representing the actual business record. It specifically is not intended by this language that there be an inquiry into the trustworthiness or accuracy of the underlying information stored in the electronic record, beyond that which would occur with any traditional business record produced in court. The same objections which previously could have been made to a traditional paper business record would apply to an electronic record. No new objections are created. The language is intended only to address whether the information contained in the electronic business record is fairly represented on the exhibit, and no more. As is the case with other business records “all other circumstances of the making of the memorandum or record, including the lack of personal knowledge of the maker, may be proved to affect its weight but shall not prohibit admissibility.”

The proposed bill will allow introduction into evidence in paper or other tangible form computer business records, which, though kept in the ordinary course of business, may never have been maintained as a paper or other tangible document. The Committee modification has previously proposed amendments to CPLR 4518 to achieve this purpose, but the modification to this proposal includes specific reference to the electronic record as defined in the State Technology Law. Presently, while the State Technology Law provides for the admissibility of electronic records, that law does not provide for the admissibility of accurate derivative documents.

CPLR 4539, which deals with reproductions, such as carbon copies of photocopies, is not an adequate vehicle for providing for the introduction of exhibits derived from electronic records. This is because CPLR 4539 requires that the reproduction itself have been created in the ordinary course of business. It is anticipated that reliable recompilations of electronic records often would not have been created in the ordinary course of business. CPLR 4539(b), in dealing with reproductions through processes which store an image, and which processes do not permit alterations, deletions or changes without leaving a record of such additions, does not generally address database records and could impose technical impediments to admissibility based on difficulty and proof of the protections against undetectable alteration. The 1996 legislation that added subdivision (b) ensures that an electronic image of a document may be introduced into evidence in the same manner as the original document and allows for paper intensive industries to safely dispose of the original hardcopy and archive only optically-scanned images. However, the 1996 legislation does not deal with technologies that record information other than through an image, and also such legislation could have the unintended effect of restricting the admissibility of electronic records not stored with the technology described in the legislation.

The Committee believes that this proposal would codify current practice in the courts, expand the impact and usability of electronic records within the meaning of the State Technology Law, and provide a clear standard for admissibility of information stored in business computer systems in the State.

1992 Recommendations of Advisory Committee on Civil Practice:

The Committee’s attention has been called to a gap in the coverage of CPLR 4518(c), which provides for the certification or authentication of, among other things, records of patient care maintained by a hospital. In conjunction with CPLR 2306, the statute provides that, in response to a subpoena duces tecum, copies of patient records may be produced and are prima facie evidence of the facts contained therein if certified by the head of the hospital, laboratory, or an employee delegated by a qualified physician.

The gap in coverage arises when a hospital is closed and there is no head of hospital or other person who may certify the records pursuant to CPLR 4518(c). Typically, the hospital's records are held by a warehouse or records archive company which is in the business of storing records.

Numerous hospitals in New York State have closed in the recent past, and as financial pressures intensify, it is clear that others also will close, particularly small hospitals. New York State Health Department Regulations 10 NYCRR 401.4(i) provide for retention of records of a hospital which is closing, pursuant to a written plan approved by the State Commissioner of Health, but such written plans do not and cannot address the evidentiary problem of authenticating such records in a judicial proceeding.

The Committee proposes to fill the gap by permitting a person who is in the business of maintaining records to certify as to his authority to hold them, and to who has had access to them.

Because the warehouseman cannot certify that the record received from the hospital is, in fact, the complete hospital record, the warehouseman should be permitted to give a certificate as to the facts he ordinarily would know, making the records admissible, with the issues of their completeness and weight to be left to the judgment of the trier of facts.

Advisory Committee Notes:

This rule is the same as former § 374-a with minor language changes; the title has been changed from "admissibility of certain written records."

In view of the breadth of this provision, § 373, which made books of foreign corporations "presumptive" evidence, is not required. Similarly, § 374, which provided for the use of copies of books of foreign corporations, is not required. Copies of the papers may be obtained under CPLR § 3120 and admissions of their accuracy procured through use of § 3123. In the absence of an admission and an inability to obtain the original records by subpoena, copies could be introduced as secondary evidence without reliance upon former § 374. See People v Burgess (1927) 244 NY 472, 479, 155 NE 745, 748.

Former § 340, which covered admissions by a “member of an aggregate corporation,” is not necessary. The general rule on admissions by corporate agents covers the matter. Compare § 3117(a)(2).

The term “prima facie” has been substituted for “presumptive” throughout this article for reasons of consistency without intending any change in meaning. As used, the term means a presumption which shifts the burden of coming forward and not the burden of persuasion. It is rebutted when evidence contrary to the presumed fact sufficient to support a finding of its negative has been introduced.

Amendment Notes:

2005. Chapter 741, § 1 amended:

Sub (a), by deleting “one”.

2007. Chapter 601, § 10 amended:

Sub (f), by deleting “department of social services” and “department” and “department” and “department”.

The 2017 amendment by ch 229, § 1, in (c), substituted “paragraph (thirteen) of subsection (a)” for “paragraph (h) of subdivision one” in the second sentence, and added the last sentence.

The 2018 amendment by ch 237, § 5, in (c), deleted “or ‘warehouseman’” following “in the custody of a warehouse” in the second sentence, and in the third sentence, substituted “Any warehouse providing” for “Any warehouseman providing” and “the warehouse is authorized” for “the warehouseman is authorized”; and made a stylistic change.

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I. Under CPLR

A. In General

1. Generally

In prosecution for conspiracy and criminal usury, fact that records sought to be admitted as hearsay exception under CLS CPLR § 4518 were business records of sole proprietor, or that their intended purpose was for internal use rather than display to third parties, was not disqualifying, so long as writings did not record purely personal acts or events and were made in course of some “business” in accordance with foundation requirements of statute. It was question of law whether 2 miniature pocket diaries introduced as master records of loan shark were business records within meaning of CLS CPLR § 4518, and jury was free to consider weight of such evidence, in light of other circumstances of making of records contained in diaries in question, only after threshold requirements for their admissibility, pursuant to hearsay exception, were met. People v Kennedy, 68 N.Y.2d 569, 510 N.Y.S.2d 853, 503 N.E.2d 501, 1986 N.Y. LEXIS 21171 (N.Y. 1986).

Mere filing of papers received from other entities, even if they are retained in regular course of business, is insufficient to qualify documents as business records. People v Cratsley, 86 N.Y.2d 81, 629 N.Y.S.2d 992, 653 N.E.2d 1162, 1995 N.Y. LEXIS 2232 (N.Y. 1995).

Evidence was insufficient to sustain award of damages where based upon exhibit which failed to meet the requirement of CPLR 4518(a), where the books and records were not produced, and there was no witness who could testify to the accuracy of the exhibit. Cameras for Industry, Inc. v I. D. Precision Components Corp., 30 A.D.2d 526, 290 N.Y.S.2d 525, 1968 N.Y. App. Div. LEXIS 3905 (N.Y. App. Div. 1st Dep't 1968).

Even though commissioner of social services is not bound strictly by rules of evidence at hearing held by department of social services, evidence consisting of reports of interviews with anonymous persons, introduced without makers of reports being present at hearing, and with

only one department witness offered for testimony and cross-examination, was rank hearsay not even approaching minimum standards of fairness, and admission of such evidence could not be explained by business records exception (CPLR 4518, subd a). Del Valle v Sugarman, 44 A.D.2d 523, 353 N.Y.S.2d 215, 1974 N.Y. App. Div. LEXIS 5485 (N.Y. App. Div. 1st Dep't 1974).

Fact that some of entries in records, which were within business entry exception to hearsay rule, were out of chronological order affected weight to be given to such evidence but not its admissibility. People v Porter, 46 A.D.2d 307, 362 N.Y.S.2d 249, 1974 N.Y. App. Div. LEXIS 3229 (N.Y. App. Div. 3d Dep't 1974).

The defendants in an action for personal injuries were entitled to a new trial where the trial court should have charged the applicable section of the traffic regulations in view of the possibility, recognized by the court, that the jury might find the pedestrian plaintiff was not within a crosswalk at the time of the accident, and where the trial court erred in refusing to mark in evidence the defendants' cost sheets for construction sites which were relevant since they buttressed other proof tending to show that one of the defendants was not at those sites on the day of the accident. Campbell v National Acoustics, Inc., 79 A.D.2d 912, 434 N.Y.S.2d 430, 1981 N.Y. App. Div. LEXIS 9783 (N.Y. App. Div. 1st Dep't 1981).

In an action for damages for breach of contract, where defendant had ordered goods from the plaintiff to be delivered to defendant's lessee, a letter from the lessee to plaintiff confirming delivery of the goods dated eight months after the purported delivery was not admissible as a business record made in the ordinary course of business and at the time of the event recorded or within a reasonable time thereafter. Standard Textile Co. v National Equipment Rental, Ltd., 80 A.D.2d 911, 437 N.Y.S.2d 398, 1981 N.Y. App. Div. LEXIS 10795 (N.Y. App. Div. 2d Dep't 1981).

The trial court properly denied admission of defendant's business records under CPLR § 4518, where the documents in question were not routinely prepared in the ordinary course of defendant's business so as to qualify as business records under § 4518, and where the content of the documents was the subject of much testimony at the trial so that the court's failure to

admit them into evidence was in no way injurious to defendant. Northway Decking & Sheet Metal Corp. v Clifton Steel Corp., 86 A.D.2d 944, 448 N.Y.S.2d 603, 1982 N.Y. App. Div. LEXIS 15629 (N.Y. App. Div. 3d Dep't 1982).

Certain business records may be received in evidence without having been authenticated by their maker, but only if they are certified in accordance with CLS CPLR § 4518(c). Peerless Ins. Co. v Milloul, 140 A.D.2d 346, 527 N.Y.S.2d 838, 1988 N.Y. App. Div. LEXIS 4600 (N.Y. App. Div. 2d Dep't 1988).

In rape trial wherein defendant sought to negate element of forcible compulsion by use of photographs of victim taken by police investigator at hospital following incident, court properly denied admission of photographs for lack of proper authentication where investigator and emergency room physician both testified that photographs did not fairly and accurately represent victim’s injuries; business records exception to hearsay rule does not overcome other exclusionary rules that apply. People v Tortorice, 142 A.D.2d 916, 531 N.Y.S.2d 414, 1988 N.Y. App. Div. LEXIS 8045 (N.Y. App. Div. 3d Dep't 1988).

In trial for second degree grand larceny in which it was alleged that defendant altered payroll documents and thereby caused himself to receive undue compensation for overtime work that he did not perform, prosecutor failed to lay proper foundation for admission into evidence of photocopies of defendant’s paychecks where (1) first witness testified that photocopies were produced in regular course of business of city office of payroll administration, but admitted that he did not work for that office and could not state with any degree of certainty whether records were accurate, and (2) second witness contradicted first witness when he stated that photocopies were made by bank and were produced after checks were cashed. People v Rosa, 156 A.D.2d 733, 549 N.Y.S.2d 487, 1989 N.Y. App. Div. LEXIS 16478 (N.Y. App. Div. 2d Dep't 1989), app. denied, 76 N.Y.2d 795, 559 N.Y.S.2d 1000, 559 N.E.2d 694, 1990 N.Y. LEXIS 2876 (N.Y. 1990).

In delinquency proceeding predicated on juvenile’s commission of weapons offenses in connection carrying gun in his school bookbag, ballistics report was improperly admitted in

evidence under CLS CPLR § 4518 where certification of report mandated by § 4518(c) was undated, and nothing in report indicated that entries were either contemporaneous with testing of weapon or were made within reasonable time thereof, as required by § 4518(a). In re Gregory M., 184 A.D.2d 252, 585 N.Y.S.2d 193, 1992 N.Y. App. Div. LEXIS 7804 (N.Y. App. Div. 1st Dep't 1992), aff'd, 82 N.Y.2d 588, 606 N.Y.S.2d 579, 627 N.E.2d 500, 1993 N.Y. LEXIS 4353 (N.Y. 1993).

Medical report was properly expunged from record where proper foundation for its admission was never established. Paulino v Marchelletta, 216 A.D.2d 446, 628 N.Y.S.2d 541, 1995 N.Y. App. Div. LEXIS 6482 (N.Y. App. Div. 2d Dep't 1995).

Social services agency constitutes business for purposes of CLS CPLR § 4518 business records rule even though its actions are, at times, investigatory in nature. People v Montroy, 225 A.D.2d 913, 639 N.Y.S.2d 522, 1996 N.Y. App. Div. LEXIS 2297 (N.Y. App. Div. 3d Dep't 1996).

In eminent domain proceeding, real estate developer who was not qualified as appraiser was improperly allowed to testify on issue of land value, and report which he had prepared around time of taking for former employer, who was interested in purchasing subject property, was not admissible as business record. Town of Webb v Sisters Realty North Corp., 229 A.D.2d 942, 645 N.Y.S.2d 233, 1996 N.Y. App. Div. LEXIS 8978 (N.Y. App. Div. 4th Dep't 1996).

Subcontractor’s failure to procure additional insured coverage in accordance with its contract entitled general contractor to indemnification for injured plaintiff’s damages regardless of which party was culpable; thus, it was immaterial to general contractor’s motion for partial summary judgment whether subcontractor’s involvement in removing temporary wood treads from step where plaintiff was injured qualified as business record. Lenze v Lehrer McGovern & Bovis, Inc., 245 A.D.2d 209, 665 N.Y.S.2d 899, 1997 N.Y. App. Div. LEXIS 13327 (N.Y. App. Div. 1st Dep't 1997).

Records of prior similar accidents are admissible and discoverable in negligence action because they are relevant in proving that particular condition was dangerous and that defendant had

notice of that condition. In action against railroad for injuries sustained when plaintiff fell from diesel train that suddenly accelerated while he was getting off at station, plaintiff was entitled to production of accident reports of prior similar occurrences on diesel trains for specified period where such reports were material and relevant to prove that leaving train doors open while train was pulling out of station was dangerous condition and that railroad had notice of it. Coan v Long Island R.R., 246 A.D.2d 569, 668 N.Y.S.2d 44, 1998 N.Y. App. Div. LEXIS 401 (N.Y. App. Div. 2d Dep't 1998).

Trial court properly denied an assignee's motion for summary judgment because the assignee failed to establish that it had standing by virtue of a pooling agreement or a written assignment of the note prior to commencement of the action where an employee of the loan servicer did not attest in her affidavit that she was personally familiar with the plaintiff's record-keeping practices and procedures as required for a business record. Deutsche Bank Natl. Trust Co. v Brewton, 142 A.D.3d 683, 37 N.Y.S.3d 25, 2016 N.Y. App. Div. LEXIS 5781 (N.Y. App. Div. 2d Dep't 2016).

Although CPLR § 4518, subd c appears to supply the truth-step, bridging the gap between proof that a statement was made and incorporated in a business record and proof that the statement is true, the amendment in fact effected only a technical change with a remedial purpose, and admissibility under CPLR § 4518, subd c of the contents of records is still governed by the same standard of relevancy which governed admissibility under CPLR § 4518, subd a. People v Meyers, 72 Misc. 2d 1003, 340 N.Y.S.2d 505, 1973 N.Y. Misc. LEXIS 2288 (N.Y. City Crim. Ct. 1973).

Simply receiving a paper purportedly signed by another and putting it in one’s file does not make that paper a writing or record made by the recipient sufficient to permit its introduction into evidence as a business record. Burgess v Leon's Auto Collision, Inc., 87 Misc. 2d 351, 385 N.Y.S.2d 470, 1976 N.Y. Misc. LEXIS 2213 (N.Y. Civ. Ct. 1976), aff'd, 91 Misc. 2d 128, 397 N.Y.S.2d 358, 1977 N.Y. Misc. LEXIS 2253 (N.Y. App. Term 1977).

Under the statutory provision authorizing the admission of a business record into evidence if the judge finds that it was made in the regular course of business and that it was the regular course of such business to make it at the time of the transaction or event or within a reasonable time thereafter (CPLR 4518), all other circumstances of the making of the record, including lack of personal knowledge by the maker, may be proved to affect its weight, but not its admissibility. For a business record to be admissible, it must be imparted by persons who were under a duty to impart such information. Chase Manhattan Bank (N.A.), Bank Americard Div. v Hobbs, 94 Misc. 2d 780, 405 N.Y.S.2d 967, 1978 N.Y. Misc. LEXIS 2363 (N.Y. Sup. Ct. 1978).

At drunk driving trial, court properly allowed introduction of records relating to calibration of breathalyzer and breath analyzer ampoules to show that both machine and solution used to test defendant’s blood alcohol level were in proper order, despite fact that certification of calibration test was dated 17 days after its performance and ampoule analysis was certified over 4 months thereafter; in order for documentary evidence, necessary to meet foundational requirements for introduction of breathalyzer results, to be admitted under CLS CPLR § 4518, their certifications need only show that entries into records were made at time test was performed or within reasonable time thereafter, but certificates themselves need not be dated on same date as document which they certify or within reasonable time thereafter. People v Fogle, 135 Misc. 2d 786, 516 N.Y.S.2d 864, 1987 N.Y. Misc. LEXIS 2305 (N.Y. County Ct.), app. denied, 70 N.Y.2d 799, 522 N.Y.S.2d 117, 516 N.E.2d 1230, 1987 N.Y. LEXIS 19439 (N.Y. 1987).

Petitioner satisfied her initial burden of going forward by showing that series of blood genetic marker tests established probability of paternity of 98.35 percent, and thereby created rebuttable presumption of paternity under 95 percent threshold of CLS CPLR § 4518(d); thus, in light of testimony that industry standard for showing paternity is 99 percent probability, petitioner failed to sustain her burden of proof, thus requiring additional testing, followed by another hearing. In re Estate of Wilkins, 184 Misc. 2d 218, 707 N.Y.S.2d 774, 2000 N.Y. Misc. LEXIS 134 (N.Y. Sur. Ct. 2000).

Relationship between the two entities and the nature of the records in question may give the party using the information sufficient familiarity with the records to allow the admission of the evidence and to provide foundation testimony for their admittance, circumstantial familiarity. People v Etienne, 192 Misc. 2d 90, 745 N.Y.S.2d 867, 2002 N.Y. Misc. LEXIS 879 (N.Y. Dist. Ct. 2002).

When a provider sued an insurer for refusing to pay or deny the provider's claim for first party no-fault benefits, the provider was not entitled to summary judgment because the provider did not show that the provider submitted business records in connection with the provider's claim, as required as part of the provider's prima facie proof. Victory Med. Diagnostics, P.C. v Nationwide Prop. & Cas. Ins. Co., 949 N.Y.S.2d 855, 36 Misc. 3d 568, 2012 N.Y. Misc. LEXIS 2597 (N.Y. Dist. Ct. 2012).

Document admitted pursuant to N.Y. C.P.L.R. 4518 can be treated like any other piece of evidence, which means that if the document is not trustworthy, then the trier of fact can give it no weight; even assuming the court did not exclude a bank's documentary evidence, the court would have given the documents no weight because of the absence of meaningful foundation testimony. JP Morgan Chase Bank, N.A. v Rabel, 894 N.Y.S.2d 857, 27 Misc. 3d 656, 2010 N.Y. Misc. LEXIS 307 (N.Y. Civ. Ct. 2010).

2. Purpose of statute

The business entry exception to the hearsay rule is based on the concept of routineness; the routineness of an entry in the usual course of business tends to guarantee truthfulness because of the absence of motivation to falsify. Ed Guth Realty, Inc. v Gingold, 34 N.Y.2d 440, 358 N.Y.S.2d 367, 315 N.E.2d 441, 1974 N.Y. LEXIS 1458 (N.Y. 1974).

The purpose of this statute is to eliminate the necessity of calling a large number of employees who participated in making entries in the business records. In re Fifth Ave. Coach Lines, Inc., 42 Misc. 2d 319, 247 N.Y.S.2d 933, 1964 N.Y. Misc. LEXIS 2056 (N.Y. Sup. Ct. 1964).

Purpose of this section is to make admissible a writing or record made in the regular course of business without necessity of calling as witnesses all those who had a part in making it. In re Anonymous, 44 Misc. 2d 691, 254 N.Y.S.2d 967, 1964 N.Y. Misc. LEXIS 1355 (N.Y. Fam. Ct. 1964).

The business records exception to the hearsay rule permits the introduction into evidence of any record made in the course of a regularly conducted business provided that it was the regular course of business to make such an entry; the primary purpose for the exception is to make admissible a writing or a record without the necessity of calling as witnesses all the employees who had a part in making the entry. In re V., 94 Misc. 2d 172, 405 N.Y.S.2d 207, 1978 N.Y. Misc. LEXIS 2212 (N.Y. Fam. Ct. 1978), aff'd, 74 A.D.2d 1008, 1980 N.Y. App. Div. LEXIS 15806 (N.Y. App. Div. 1st Dep't 1980), aff'd, 74 A.D.2d 1008, 1980 N.Y. App. Div. LEXIS 15815 (N.Y. App. Div. 1st Dep't 1980).

3. Self-serving aspect

Employee’s report of railroad grade accident, admissible as record made in regular course of business, is not rendered inadmissible solely because it may be self-serving. Bishin v New York C. R. Co., 20 A.D.2d 921, 249 N.Y.S.2d 778, 1964 N.Y. App. Div. LEXIS 3941 (N.Y. App. Div. 2d Dep't 1964).

The self-serving aspect of a business record does not preclude its admissibility under the statute but is merely a consideration affecting the weight to be given to it. Harsco Corp. v Rodolitz Realty Corp., 61 Misc. 2d 644, 307 N.Y.S.2d 531, 1969 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct. 1969).

4. Shop-book rule

The shop-book rule is designed to permit incidental testimonial use of records which are made and kept primarily for non-testimonial purposes, and do not serve as substitutes for testimony.

Incompetent evidence will not become competent through its inclusion in a shop-book record. People v Crant, 42 Misc. 2d 350, 248 N.Y.S.2d 310, 1964 N.Y. Misc. LEXIS 1920 (N.Y. City Ct. 1964).

The “shop-book rule” now embodied in CPLR 4518(a) is a restatement without substantive change in language of the “business records” exception to the hearsay rule, formerly § 374-a of the Civil Practice Act. Harsco Corp. v Rodolitz Realty Corp., 61 Misc. 2d 644, 307 N.Y.S.2d 531, 1969 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct. 1969).

B. Admissibility Of Particular Kinds Of Records

1. In General

5. Generally

Plaintiff’s one page summary of damages, which jury appeared to have relied on exclusively in rendering award, should not have been received into evidence since document was not prepared in regular course of business so as to qualify for admission as business record, but was instead prepared in anticipation of litigation. National States Elec. Corp. v LFO Constr. Corp., 203 A.D.2d 49, 609 N.Y.S.2d 900, 1994 N.Y. App. Div. LEXIS 3590 (N.Y. App. Div. 1st Dep't 1994).

Defendant’s unsworn statement, prepared at his attorney’s office for sole purpose of litigation, was not admissible business record because it was not prepared in regular course of any business, and thus it could not be considered in opposition to summary judgment motion. Bendik v Dybowski, 227 A.D.2d 228, 642 N.Y.S.2d 284, 1996 N.Y. App. Div. LEXIS 5241 (N.Y. App. Div. 1st Dep't 1996).

Documents were properly admitted into evidence in a breach of contract action pursuant to the business records hearsay exception because, although the witness was employed by

publisher’s successor, the witness was fully familiar with the publisher’s record-keeping procedures and practices. Yellow Book of N.Y., L.P. v Cataldo, 81 A.D.3d 638, 917 N.Y.S.2d 215, 2011 N.Y. App. Div. LEXIS 665 (N.Y. App. Div. 2d Dep't 2011).

Although no proper foundation was laid to admit records as business records, five of the six challenged exhibits were records from the judgment debtor’s bankruptcy proceeding of which the trial court was entitled to take judicial notice; further, the judgment debtor and the LLC suffered no prejudice by the introduction of the final contested exhibit, an affidavit of service stating that the judgment debtor and the LLC were served with the judgment creditor’s notice to admit, inasmuch as the judgment debtor and the LLC did not object to the notice to admit itself. Accordingly, any error in admitting the challenged records was harmless. Matter of Bernasconi v Aeon, LLC, 105 A.D.3d 1167, 963 N.Y.S.2d 437, 2013 N.Y. App. Div. LEXIS 2371 (N.Y. App. Div. 3d Dep't 2013).

Judgment in favor of plaintiffs in a wrongful death action was affirmed; hearsay statements were properly admitted as admissions on the issue of the contractor’s knowledge of the existence and extent of danger presented by a defective wall, as some of the statements were contained in notes made by a witness that were properly admitted as business records under N.Y. C.P.L.R. 4518. Browne v Prime Contr. Design Corp., 308 A.D.2d 372, 764 N.Y.S.2d 269, 2003 N.Y. App. Div. LEXIS 9565 (N.Y. App. Div. 1st Dep't 2003), app. denied, 2 N.Y.3d 702, 778 N.Y.S.2d 460, 810 N.E.2d 913, 2004 N.Y. LEXIS 549 (N.Y. 2004).

Guarantor failed to demonstrate the admissibility of the records relied upon by its account officer under the business records exception to the hearsay rule and thus, failed to establish a default payment under the note. Cadlerock Joint Venture, L.P. v Trombley, 150 A.D.3d 957, 54 N.Y.S.3d 127, 2017 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 2d Dep't 2017).

Because an advertiser merely changed its name, not its function, and because its witness was imparted with the information necessary to set forth the foundation necessary to establish the record as a business record under N.Y. C.P.L.R. 4518(a), there was no basis to vacate or set

aside a verdict in the advertiser's favor. Yellow Book of N.Y. LP v Cataldo, 242 N.Y.L.J. 115, 2009 N.Y. Misc. LEXIS 6704 (N.Y. Sup. Ct. Nov. 16, 2009).

6. Accident reports

It was error to exclude from evidence written accident report of witness and to refuse to allow witness to give complete account of accident reported to him by eyewitness after door therefor had been opened by plaintiff on cross-examination of witness. Feblot v New York Times Co., 32 N.Y.2d 486, 346 N.Y.S.2d 256, 299 N.E.2d 672, 1973 N.Y. LEXIS 1160 (N.Y. 1973).

Accident report made by a deputy sheriff was admissible as a business record where an under-sheriff testified that it was the usual form made out after each accident by the investigation officer whose duty it was to prepare it; that the signature thereon was that of the deputy he had dispatched to the scene of the accident; that such report was regularly kept in the course of the regular business of his department and was produced from the files of the department. Chemical Leaman Tank Lines, Inc. v Stevens, 21 A.D.2d 556, 251 N.Y.S.2d 240, 1964 N.Y. App. Div. LEXIS 3231 (N.Y. App. Div. 3d Dep't 1964).

A police accident report based merely upon the conclusions of the investigating officer as to the cause of the accident was not admissible as an entry made in the regular course of business. Sinkevich v Cenkus, 24 A.D.2d 903, 264 N.Y.S.2d 979, 1965 N.Y. App. Div. LEXIS 2931 (N.Y. App. Div. 2d Dep't 1965).

The statutory requirement that the business record be prepared within a reasonable time after the occurrence should not be too rigidly applied, and would not prevent the introduction of an accident report of a truck driver made 15 days after the collision with plaintiff's car. Toll v State, 32 A.D.2d 47, 299 N.Y.S.2d 589, 1969 N.Y. App. Div. LEXIS 4090 (N.Y. App. Div. 3d Dep't 1969).

A report filed by a state trooper who did not witness the collision between plaintiff's car and a state truck was inadmissible in the absence of proof that whoever gave the trooper the facts had

a business duty to do so. The court held that pursuant to CPLR 4518(a) a police report may be admitted as proof of the facts recorded therein if the reporter was a witness, or if the person giving the policeman the information was under a business duty to relate the facts to him; and that if neither of those requisites was satisfied, but the report recited a statement of an outsider, the record might be admitted to prove the statement recorded therein was made by an outsider and then the facts recited might be proven by the business record if the statement qualified as a hearsay exception. Toll v State, 32 A.D.2d 47, 299 N.Y.S.2d 589, 1969 N.Y. App. Div. LEXIS 4090 (N.Y. App. Div. 3d Dep't 1969).

A ruling that a report by a police officer who investigated a similar rear-end collision involving respondent in the same car some 10 months prior to the present accident because the police officer had no independent recollection of the facts deduced on the report, was not admissible improperly precluded the appellant from attempting to lay a proper foundation for the admission into evidence of an admitted business record and proof of a prior accident is clearly admissible to show a prior similar injury as such might affect the issue of damages. Janac v Adams, 35 A.D.2d 623, 312 N.Y.S.2d 483, 1970 N.Y. App. Div. LEXIS 4122 (N.Y. App. Div. 3d Dep't 1970).

A police accident report may be admitted as a report in the ordinary course of business to prove the truth of the matter stated therein if the entrant of the facts stated in such report witnesses the accident or the person giving entrant the information is under a business duty to do so. Police accident report in the nature of an “aided an accident card” was not admissible as a record made in the ordinary course of business where officer’s testimony as to source of information was vague and failed to reveal a business duty on informant to relate facts contained in such report, and where officer was not a witness to the accident. Wright v McCoy, 41 A.D.2d 873, 343 N.Y.S.2d 143, 1973 N.Y. App. Div. LEXIS 4624 (N.Y. App. Div. 3d Dep't 1973).

If informant furnishing information embodied in record or report was not under a business duty to impart the information, but the entrant was under a business duty to obtain and record the statement, the entry is admissible to establish merely that the statement was made. Hayes v State, 50 A.D.2d 693, 376 N.Y.S.2d 647, 1975 N.Y. App. Div. LEXIS 12543 (N.Y. App. Div. 3d

Dep't 1975), aff'd, 40 N.Y.2d 1044, 392 N.Y.S.2d 282, 360 N.E.2d 959, 1976 N.Y. LEXIS 3230 (N.Y. 1976).

Police memorandum made in the regular course of business was admissible in negligence action upon issue of existence of a stop sign. Schlobohm v Command Trucking Corp., 52 A.D.2d 844, 382 N.Y.S.2d 816, 1976 N.Y. App. Div. LEXIS 12675 (N.Y. App. Div. 2d Dep't 1976).

In negligence action brought against public utility in which plaintiff alleged that utility was negligent in leaving cable in gutter of street, trial court erred in admitting into evidence diagram prepared by police officer which tended to show by continuing arrows thereon that plaintiff was roller-skating in the street rather than on sidewalk prior to accident, in view of fact that diagram was not a record kept in the ordinary course of business and constituted hearsay evidence which was otherwise inadmissible. Driscoll v New York City Transit Authority, 53 A.D.2d 391, 385 N.Y.S.2d 540, 1976 N.Y. App. Div. LEXIS 13066 (N.Y. App. Div. 1st Dep't 1976).

Where transit authority motorman made report to employer on date of accident concerning collision with complainant, report did not purport to be more than statement of what motorman actually saw, and motorman testified and was cross-examined in regard to accident, it was harmless error, if any, for trial court to admit motorman’s report of accident as entry in regular course of business. Galanek v New York City Transit Authority, 53 A.D.2d 586, 385 N.Y.S.2d 62, 1976 N.Y. App. Div. LEXIS 13229 (N.Y. App. Div. 1st Dep't 1976).

In a personal injury action arising out of an auto accident, a motor vehicle accident report prepared by a non-eyewitness police officer and admitted into evidence contained hearsay statements and was not admissible as a business record exception under CPLR R 4518 where the sources of the information contained therein were unclear and where there was no testimony as to who made the statement concluding that the cause of the accident was the excessive speed of the defendant’s car, whether he was under a business duty to make the statement, or whether some other hearsay exception would render the statement admissible; taking judicial notice of the stopping distance of an automobile travelling at a particular speed was error,

especially where it was not clearly indicated to the jury that it was an average distance for automobiles operating under favorable conditions. Murray v Donlan, 77 A.D.2d 337, 433 N.Y.S.2d 184, 1980 N.Y. App. Div. LEXIS 13380 (N.Y. App. Div. 2d Dep't 1980), app. dismissed, 52 N.Y.2d 1071, 1981 N.Y. LEXIS 5919 (N.Y. 1981).

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).

In a personal injury action based on a traffic accident at a controlled intersection, the trial court erred in admitting a copy of a police accident report that contained a statement indicating that defendant had had a green light in her favor at the time of the accident where there was no entry in the report to indicate from whom such information had come, where there was no other testimony to establish who had made the statement, whether such person was under a business duty to make it, or whether some other hearsay exception rendered the statement admissible, and where the police officer who prepared the report had not been an eyewitness to the accident and had died prior to the time of trial. Gagliano v Vaccaro, 97 A.D.2d 430, 467 N.Y.S.2d 396, 1983 N.Y. App. Div. LEXIS 20011 (N.Y. App. Div. 2d Dep't 1983).

In a personal injury action arising from a two-vehicle accident, the trial court committed reversible error by admitting a police report concerning the accident into evidence as a business record under CPLR § 4518, which report contained statements by defendant concerning her opinion that plaintiff had caused the accident by driving his motorcycle too fast, especially given that the trial court compounded its error by charging the jury that, if they found that plaintiff had

exceeded the posted speed limit, a conclusion not supported by any other direct or circumstantial evidence, they could consider the violation some evidence of negligence on his part; additionally, while the errors otherwise might arguably have affected only the two drivers, they also impacted on plaintiff's strict liability action against the motorcycle manufacturer, in which interrogatories were posed to the jury indicating that, if the jury believed plaintiff was traveling above the speed limit, they might conclude that he could not have avoided the accident notwithstanding the existence of a defect in the motorcycle. Auer v Bienstock, 104 A.D.2d 350, 478 N.Y.S.2d 681, 1984 N.Y. App. Div. LEXIS 19820 (N.Y. App. Div. 2d Dep't 1984).

A duplicate automobile accident report was admissible into evidence as a business record in an action for damages arising out of the accident where the report was based on the personal observations of the officer making the report as recorded within a reasonable time of the event. Preparation of the duplicate report 260 days after the accident due to the first report being lost was proper where the duplicate report was prepared from the officer's notes and memory of the accident. D'Arienzo v Manderville, 106 A.D.2d 686, 484 N.Y.S.2d 171, 1984 N.Y. App. Div. LEXIS 21647 (N.Y. App. Div. 3d Dep't 1984).

In personal injury action arising from automobile accident, it was reversible error to admit into evidence portion of accident report which consisted of defendant's self-serving hearsay statement concerning plaintiff's actions immediately prior to accident, since defendant was under no business duty to report accident to police, and her statement did not qualify as declaration against interest or fall under other exception to hearsay rule. Casey v Tierno, 127 A.D.2d 727, 512 N.Y.S.2d 123, 1987 N.Y. App. Div. LEXIS 43216 (N.Y. App. Div. 2d Dep't 1987).

In negligence action arising out of accident in which plaintiffs were burned when they touched third rail of city subway system, fire marshal's report indicating that plaintiffs came in contact with rail as result of their own actions was admissible under business record exception to hearsay rule, since report was prepared by marshal in regular course of his duties promptly after he interviewed one plaintiff; court erred in excluding report on ground that marshal was available

to testify, since best evidence objection was inapplicable where principal purpose for offering report in evidence was to prove that one plaintiff admitted, less than one hour after accident, that accident was plaintiffs' own fault. Clarke v New York City Transit Authority, 174 A.D.2d 268, 580 N.Y.S.2d 221, 1992 N.Y. App. Div. LEXIS 874 (N.Y. App. Div. 1st Dep't 1992).

Portion of accident report containing statement by personal injury victim's mother that victim had told her that 2 junior varsity baseball practices had been taking place on same field at time he was injured was inadmissible hearsay, even though victim alleged that he had been injured due to inadequate supervision arising from board of education's negligence in allowing 2 practices to take place simultaneously, and board of education denied that 2 practices had taken place at same time, since victim's mother was under no duty to report accident to school. Abbe v Board of Educ., 186 A.D.2d 102, 587 N.Y.S.2d 707, 1992 N.Y. App. Div. LEXIS 10557 (N.Y. App. Div. 2d Dep't 1992).

It was error to admit in evidence police report diagram of accident scene where defendant had moved his vehicle from point of impact to right-hand shoulder of road before police officer arrived, and report was based on information given to officer by participant in accident. Mooney v Osowiecky, 235 A.D.2d 603, 651 N.Y.S.2d 713, 1997 N.Y. App. Div. LEXIS 15 (N.Y. App. Div. 3d Dep't 1997).

In motor vehicle accident case, part of police report containing absent taxi driver's exculpatory statement regarding bus's involvement in accident was inadmissible. Silfverchiold v Hut Cab Corp., 251 A.D.2d 121, 674 N.Y.S.2d 311, 1998 N.Y. App. Div. LEXIS 6947 (N.Y. App. Div. 1st Dep't 1998), app. denied, 94 N.Y.2d 763, 708 N.Y.S.2d 51, 729 N.E.2d 708, 2000 N.Y. LEXIS 593 (N.Y. 2000).

Unsworn, self-serving "accident report" provided by defendant cab driver to his attorney in negligence action arising from intersectional collision was incompetent and inadmissible hearsay. Perez v Brux Cab Corp., 251 A.D.2d 157, 674 N.Y.S.2d 343, 1998 N.Y. App. Div. LEXIS 7316 (N.Y. App. Div. 1st Dep't 1998).

Incident report might be admitted as a business record at a trial on a N.Y. Labor Law § 240(1) claim under N.Y. C.P.L.R 4518 because although the foreman, who provided the information in the report, stated that he did not see the worker fall from a ladder in his affidavit, the foreman also stated that he personally witnessed the circumstances surrounding the accident. Buckley v J.A. Jones/GMO, 38 A.D.3d 461, 832 N.Y.S.2d 560, 2007 N.Y. App. Div. LEXIS 3905 (N.Y. App. Div. 1st Dep't 2007).

Trial court erred by admitting a police report into evidence at the hearing because the source of the information in the police report regarding the offending vehicle's license plate number was not derived from the personal observations of the police officer, who did not observe the hit-and-run accident; however, the error was harmless because the result would have been the same had the police report not been admitted. Country-Wide Ins. Co. v Lobello, 186 A.D.3d 1213, 130 N.Y.S.3d 67, 2020 N.Y. App. Div. LEXIS 4942 (N.Y. App. Div. 2d Dep't 2020).

In personal injury action arising from hit-and-run motor vehicle accident, police report which contained license plate number of offending vehicle as transmitted by witness could be admitted in evidence under CLS CPLR § 4518 to establish that statement was made, since investigating officer had business duty to obtain and record statement. Jones v Gelineau, 154 Misc. 2d 930, 587 N.Y.S.2d 99, 1992 N.Y. Misc. LEXIS 350 (N.Y. Sup. Ct. 1992).

In personal injury action arising from hit-and-run motor vehicle accident, police report which contained license plate number of offending vehicle as transmitted by witness could not be admitted in evidence for its truth, pursuant to CLS CPLR § 4518, since witness had no business duty to transmit license plate number to police. Jones v Gelineau, 154 Misc. 2d 930, 587 N.Y.S.2d 99, 1992 N.Y. Misc. LEXIS 350 (N.Y. Sup. Ct. 1992).

In personal injury action arising from train accident, defendant was entitled to preclusion order as to Public Transportation Safety Board's investigation report and accident resolution report, as no party who would be inclined to introduce those reports into evidence would be able to lay requisite foundation under CLS CPLR § 4518(a) in that 17 NYCRR § 990.15 provides that no one from Public Transportation Safety Board may be compelled to give trial testimony in any

litigation involving matter investigated by board. 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).

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 business record, as offered, under N.Y. C.P.L.R. 4518(a), because the clerk did not witness the accident and the injured party was under no “business duty” to relate the facts of the accident to the clerk. Brown v Reece, 194 Misc. 2d 269, 753 N.Y.S.2d 825, 2003 N.Y. Misc. LEXIS 8 (N.Y. Civ. Ct. 2003).

Summary judgment for owners and contractor was proper in a widow’s suit arising from injuries allegedly suffered by the widow’s deceased husband in an elevator because, in opposition to the prima facie showing by owners and contractor, the evidence submitted by the widow in opposition was insufficient to raise a fact issue; among other things, the widow relied upon statements as to the cause of the accident contained in the accident report and the decedent’s Workers’ Compensation file, but these items contained inadmissible hearsay and the widow failed to lay the proper foundation for their admission as business records. Roldan v New York Univ., 81 A.D.3d 625, 916 N.Y.S.2d 162, 2011 N.Y. App. Div. LEXIS 643 (N.Y. App. Div. 2d Dep't 2011).

Insurer was entitled to a 90-day stay of an assignee's action for no fault benefits pending a determination by the Workers' Compensation Board as to whether the assignor was acting as an employee at the time of an automobile accident and whether he was entitled to workers' compensation benefits because, while it could be concluded that a police officer's notations on a police report were based on his personal observations at the scene of the subject accident, the form, which was signed at the bottom by the officer, was not certified, and the assignee's cross-motion for summary judgment did not contain an affidavit or other sworn evidence from someone with personal knowledge establishing its authenticity or accuracy. Clear Water Psychological Servs. PC v American Tr. Ins. Co., 54 Misc. 3d 915, 42 N.Y.S.3d 779, 2016 N.Y. Misc. LEXIS 4595 (N.Y. Civ. Ct. 2016).

7. Bank records; checks

In an action to recover upon a note and to recover sales commissions, the best evidence rule did not preclude admission into evidence of corporate check stubs where the stubs were not offered to prove the contents of the corresponding checks but rather to prove that plaintiff was in fact paid; however, the stubs were not admissible as business records under CPLR § 4518(a) where defendants failed to establish that they were completed in the regular course of their corporation’s business, or that it was the regular course of such business to complete the stubs at the time that the checks were issued or within a reasonable time thereafter. Nappi v Gerdts, 103 A.D.2d 737, 477 N.Y.S.2d 202, 1984 N.Y. App. Div. LEXIS 19338 (N.Y. App. Div. 2d Dep't 1984).

In prosecution for grand larceny, possession of forged instrument, and possession of stolen property, business records exception to hearsay rule did not apply to make admissible hearsay evidence that owner of travelers’ checks told bank that checks had been stolen and that she had signed them at top where she had no business duty to report that information. People v Edmonds, 251 A.D.2d 197, 674 N.Y.S.2d 361, 1998 N.Y. App. Div. LEXIS 7374 (N.Y. App. Div. 1st Dep't), app. denied, 92 N.Y.2d 924, 680 N.Y.S.2d 465, 703 N.E.2d 277, 1998 N.Y. LEXIS 3792 (N.Y. 1998).

In trial for fourth and fifth degree criminal possession of stolen property, bank record reporting loss of subject credit cards was improperly received in evidence, since owner of credit cards had no business duty to make report and business records exception to hearsay rule did not apply. People v Cruz, 283 A.D.2d 295, 728 N.Y.S.2d 1, 2001 N.Y. App. Div. LEXIS 5395 (N.Y. App. Div. 1st Dep't), app. denied, 97 N.Y.2d 640, 735 N.Y.S.2d 497, 761 N.E.2d 2, 2001 N.Y. LEXIS 3642 (N.Y. 2001).

In trial on damages in lender’s action against borrower and guarantors who defaulted on a promissory note and loan agreement, the referee erred in excluding corporate bank statements based on the senior credit officer’s lack of personal knowledge as to their creation; under N.Y.

C.P.L.R. 4518(a), the lack of personal knowledge did not affect the business records' admissibility. Gen. Bank v Mark II Imports Inc., 290 A.D.2d 240, 735 N.Y.S.2d 530, 2002 N.Y. App. Div. LEXIS 116 (N.Y. App. Div. 1st Dep't 2002).

Summary judgment was properly granted to businesses and a co-owner with respect to a claim of fraud by the estate of a deceased co-owner, arising from allegations that the businesses concealed that they owed a debt to the decedent, as even if a check register that showed payments to the businesses was shown to have been the decedent's, it was inadmissible as a business record under N.Y. C.P.L.R. 4518(a), and incompetent to prove that the checks were loans rather than repayments of advances. Lambert v Sklar, 91 A.D.3d 917, 937 N.Y.S.2d 318, 2012 N.Y. App. Div. LEXIS 792 (N.Y. App. Div. 2d Dep't 2012).

In a mortgage foreclosure action, the representative of the servicing agent was entitled to rely on the loan records when she addressed the issue of possession of the note and mortgage, as she did not have to have personal knowledge, her affidavit was proffered as proof of the facts stated therein, and as she was an officer the records were deemed business records. Citibank, NA v Abrams, 144 A.D.3d 1212, 40 N.Y.S.3d 653, 2016 N.Y. App. Div. LEXIS 7124 (N.Y. App. Div. 3d Dep't 2016).

Grant of summary judgment to a mortgagee was reversed because it failed to meet its prima facie burden of establishing its standing as an affidavit of its loan servicer vice-president did not attest that she was personally familiar with the record-keeping practices and procedures of the mortgagee. Wells Fargo Bank, N.A. v Talley, 153 A.D.3d 583, 59 N.Y.S.3d 743, 2017 N.Y. App. Div. LEXIS 5937 (N.Y. App. Div. 2d Dep't 2017).

Assignee failed to meet its prima facie burden of establishing that the assignor had standing to commence the foreclosure action because the assignee failed to demonstrate the admissibility of the records relied upon by its vice president (VP) under the business records exception to the hearsay rule inasmuch as the VP did not attest that she was personally familiar with the assignor's record-keeping practices and procedures. Aurora Loan Servs., LLC v Komarovsky,

151 A.D.3d 924, 58 N.Y.S.3d 96, 2017 N.Y. App. Div. LEXIS 4989 (N.Y. App. Div. 2d Dep't 2017).

Trial court erred in denying a first assignee's third motion for summary judgment in its foreclosure action because the flaws in the notarization of an affidavit were not fatal to the first assignee's summary judgment motion, the affiant, a representative of the second assignee, satisfied the applicable standards and sufficed to establish the borrower's default and the basis of the affiant's knowledge, the affiant indicated that he was personally familiar with the recordkeeping systems of the first and second assignees and the loan servicer, that the records he relied on were made in the regular course of business, and that he had personally reviewed them. Bank of Am., N.A. v Brannon, 156 A.D.3d 1, 63 N.Y.S.3d 352, 2017 N.Y. App. Div. LEXIS 7635 (N.Y. App. Div. 1st Dep't 2017).

Trial court properly granted an assignee's motion for summary judgment in its mortgage foreclosure action because the assignee had standing where it provided the mortgage and unpaid note and proof of the borrowers' default in payment, the assignee's counsel averred that his firm had been in possession of the note and accompanying allonges at the time the action was commenced and afterward, and a default service officer was entitled to rely on records maintained by the assignee's servicer in the regular course of its business to chart the history of the note and allonges and specify the location of those documents. U.S. Bank Trust, N.A. v Varian, 156 A.D.3d 1255, 68 N.Y.S.3d 556, 2017 N.Y. App. Div. LEXIS 9316 (N.Y. App. Div. 3d Dep't 2017).

In a foreclosure proceeding, a bank failed to meet its prima facie burden of establishing that it had standing as the holder or assignee of the note at the time it commenced the action because the bank failed to demonstrate the admissibility of the records that the loan servicer's employee relied upon under the business records exception to the hearsay rule, since the employee did not attest that she was personally familiar with the bank's record-keeping practices and procedures. OneWest Bank, FSB v Berino, 158 A.D.3d 811, 71 N.Y.S.3d 563, 2018 N.Y. App. Div. LEXIS 1298 (N.Y. App. Div. 2d Dep't 2018).

Trial court erred in granting summary judgment to plaintiff bank in its foreclosure action because it failed to demonstrate that the records an affiant relied on to show plaintiff possessed the original note and mortgage at the time suit was filed were admissible under the business records exception to the hearsay rule, since the affiant did not attest that he was personally familiar with plaintiff's record-keeping practices and procedures. Bank of N.Y. Mellon v Selig, 165 A.D.3d 872, 86 N.Y.S.3d 543, 2018 N.Y. App. Div. LEXIS 6915 (N.Y. App. Div. 2d Dep't 2018).

Lender failed to establish that it had standing to commence a foreclosure action because while the loan servicer's employee attested that the lender had been in continuous possession of the note and mortgage since June 26, 2007, the employee did not attest that she was personally familiar with the lender's record-keeping practices and procedures, and, as such, the lender failed to demonstrate that the records relied upon by the employee were admissible under the business records exception. EMC Mtge. Corp. v Tinari, 169 A.D.3d 1006, 94 N.Y.S.3d 593, 2019 N.Y. App. Div. LEXIS 1439 (N.Y. App. Div. 2d Dep't 2019).

Bank was not entitled to summary judgment in a mortgage foreclosure action because an affidavit of an employee of the loan servicer who did not allege personal familiarity with the bank's record-keeping practices and procedures did not provide a proper foundation to establish that the bank had standing as the holder of the note and mortgage. The employee's assertions about the content of the records were inadmissible hearsay to the extent that the records were not submitted with the affidavit. U.S. Bank Natl. Assn. v 22 S. Madison, LLC, 170 A.D.3d 772, 95 N.Y.S.3d 264, 2019 N.Y. App. Div. LEXIS 1558 (N.Y. App. Div. 2d Dep't 2019).

Mortgagee established standing in a foreclosure action by submitting a business records affidavit to prove physical possession of the note, endorsed in blank, at the time the action was commenced; familiarity with the record-keeping practices of the affiant's employer was sufficient foundation for the employer's own records. Another affidavit referencing a document created by the original lender was insufficient, absent personal knowledge of its practices, to prove default on summary judgment. Bank of N.Y. Mellon v Gordon, 171 A.D.3d 197, 97 N.Y.S.3d 286, 2019 N.Y. App. Div. LEXIS 2338 (N.Y. App. Div. 2d Dep't 2019).

In a foreclosure proceeding, the lender failed to establish a proper foundation for the admission of the records relied upon to establish the borrower's default under the business records exception to the hearsay rule because the loan servicer's employee failed to establish that the loan servicer was servicing the subject loan at the time of the borrower's alleged default, and that she was personally familiar with the recordkeeping practices and procedures of the lender and/or the loan servicer at that time. HSBC Bank USA, N.A. v Bhatti, 186 A.D.3d 817, 130 N.Y.S.3d 474, 2020 N.Y. App. Div. LEXIS 4835 (N.Y. App. Div. 2d Dep't 2020).

Plaintiff was not entitled to summary judgment on its foreclosure complaint because the foreclosure manager failed to submit any of the business records upon which she contended she relied in making her affidavit, and, as such, the foreclosure manager's averment as to defendant's purported default constituted inadmissible hearsay and lacked probative value. Selene Fin., L.P. v Coleman, 187 A.D.3d 1082, 134 N.Y.S.3d 357, 2020 N.Y. App. Div. LEXIS 6081 (N.Y. App. Div. 2d Dep't 2020).

Trial court erred in granting a lender's motion for summary judgment in its foreclosure action because the plaintiff failed to establish, prima facie, that it had standing to commence the action where the testimony of the lender's vice president of loan documentation—that the lender was the holder of the note when it commenced the action—appeared to be based upon unproduced business records or upon confirmation of information from some other unproduced source, which was inadmissible hearsay Wells Fargo Bank, N.A. v Atedgi, 2020 N.Y. App. Div. LEXIS 7404 (December 2, 2020).

Assignee failed to establish its standing to commence the foreclosure action because the affiants did not identify any particular document reviewed or attach any admissible document to show that the assignee possessed the note prior to the commencement of the action, the affidavits failed to show that either affiant possessed personal knowledge of whether the assignee possessed the note prior to the commencement of the action, and, as such, the affidavits constituted inadmissible hearsay. Ditech Fin., LLC v Khan, 189 A.D.3d 1360, 139 N.Y.S.3d 293, 2020 N.Y. App. Div. LEXIS 8010 (N.Y. App. Div. 2d Dep't 2020).

Affidavit by plaintiff's employee was sufficient to establish plaintiff's standing in a foreclosure action, given that plaintiff was the holder of the note prior to and at the time the action was commenced and at defendant's default because the employee established personal knowledge of plaintiff's business practices and procedures and that the records provided by the sub servicer of the loan were incorporated into its own records and routinely relied upon. Bayview Loan Servicing, LLC v Freyer, 192 A.D.3d 1421, 145 N.Y.S.3d 647, 2021 N.Y. App. Div. LEXIS 1940 (N.Y. App. Div. 3d Dep't 2021).

Plaintiff was entitled to summary judgment in a foreclosure action because plaintiff submitted the consolidated note and mortgage and evidence of defendant's default; plaintiff's employee was able to lay a proper foundation for the admission of the records establishing defendant's default as business records, as those records were created and maintained by plaintiff, her employer. JPMorgan Chase Bank, N.A. v Austern, 193 A.D.3d 830, 142 N.Y.S.3d 379, 2021 N.Y. App. Div. LEXIS 2420 (N.Y. App. Div. 2d Dep't 2021).

Trial court erred in granting a borrower's motion for summary judgment dismissing the lender's foreclosure complaint insofar as asserted against him because the lender's first affidavit was insufficient and, while the second affidavit was sufficient to lay a proper foundation for the admission of the annexed loan service record as a business record, the affiant's assertions as to the contents of the lender's records were inadmissible hearsay to the extent that the records she purported to describe were not submitted with her affidavit, and she did not attest to such personal knowledge regarding the physical whereabouts of the consolidated note during the relevant time. U.S. Bank N.A. v Pickering-Robinson, 197 A.D.3d 757, 153 N.Y.S.3d 179, 2021 N.Y. App. Div. LEXIS 4862 (N.Y. App. Div. 2d Dep't 2021).

Trial court properly granted a borrower's motion for summary judgment on the complaint, to strike the lender's answer and affirmative defenses, and to cancel and discharge of record the mortgage because the lender failed to raise a triable issue of fact as to whether it validly revoked the election to accelerate the debt. Persaud v U.S. Bank N.A., 197 A.D.3d 1120, 150 N.Y.S.3d 615, 2021 N.Y. App. Div. LEXIS 5031 (N.Y. App. Div. 2d Dep't 2021).

In an action by a bank to recover credit card charges, “statements” indicating the indebtedness of the holder, which were prepared in the regular course of the bank’s business and based on information contained in charge slips prepared by retail sellers when the credit card was utilized, were admissible in evidence as business records, since the retail sellers who prepared the slips were under a business duty to report the information thereon accurately and forward them to the bank for reimbursement. Chase Manhattan Bank (N.A.), Bank Americard Div. v Hobbs, 94 Misc. 2d 780, 405 N.Y.S.2d 967, 1978 N.Y. Misc. LEXIS 2363 (N.Y. Sup. Ct. 1978).

Lender failed to demonstrate the admissibility of the records a bank's loan servicer relied upon under the business records exception to the hearsay rule since the servicer did not attest that she was personally familiar with the record-keeping practices and procedures of the bank. Arch Bay Holdings, LLC v Albanese, 146 A.D.3d 849, 45 N.Y.S.3d 506, 2017 N.Y. App. Div. LEXIS 283 (N.Y. App. Div. 2d Dep't 2017).

Ledger books and computer records of cocaine transactions constituted business records and were admissible as evidence, even though they were maintained by criminal enterprise, where proper foundation for admission was laid by demonstrating that entries were reported in regular, methodical manner in regular course of cocaine supplier’s business, and that it was in regular course of his business to make such entries. People v Macklowitz, 135 Misc. 2d 232, 514 N.Y.S.2d 883, 1987 N.Y. Misc. LEXIS 2205 (N.Y. Sup. Ct. 1987).

Bank failed to lay a proper evidentiary foundation for the admission of a record of payments made and a letter to the borrower as business records pursuant to N.Y. C.P.L.R. 4518; although the bank’s witness testified that both documents were made in the regular course of the bank’s business, he did not establish that he was familiar with the bank’s business practices or procedures, and he further failed to establish when, how, or by whom they were made. Further, the witness failed to demonstrate that the preparer of the exhibits had actual knowledge of the events recorded therein or that they obtained knowledge of those events from someone with actual knowledge of them and who had a business duty to relay information regarding the

events to the preparer. JP Morgan Chase Bank, N.A. v Rabel, 894 N.Y.S.2d 857, 27 Misc. 3d 656, 2010 N.Y. Misc. LEXIS 307 (N.Y. Civ. Ct. 2010).

In a mortgage foreclosure case, the loan servicer's computer printout was not a business record that could be used to establish possession of the note and thus to prove the bank's standing because it was made after the events it purported to relate to, for the purposes of litigation. Even if it were a business record, the analyst who testified relied on an entry that someone else had reviewed and did not establish his personal knowledge. Deutsche Bank Natl. Trust Co. v Cohen, 60 Misc. 3d 182, 72 N.Y.S.3d 413, 2018 N.Y. Misc. LEXIS 723 (N.Y. Sup. Ct. 2018).

In a mortgage foreclosure action, where an analyst for the loan servicer testified that he was not familiar with the successor bank's practices for maintaining its business records, his testimony was inadmissible to prove the bank's possession of the note prior to commencement of the action. Deutsche Bank Natl. Trust Co. v Cohen, 2018 N.Y. Misc. LEXIS 354 (N.Y. Sup. Ct. 2018).

Where a document appeared to be made in an attempt to establish a successor bank's possession of a note in a mortgage foreclosure action, it was a document specifically prepared for litigation and therefore inadmissible as a business record. Deutsche Bank Natl. Trust Co. v Cohen, 2018 N.Y. Misc. LEXIS 354 (N.Y. Sup. Ct. 2018).

In a mortgage foreclosure case, the bank's standing was established by testimony from an employee of the servicer that the servicer maintained the bank's business records and that he had personal knowledge of how the bank's and servicer's records were made and kept in the regular course of business, establishing his ability to testify to both entities' business records pursuant to this provision. Bank of N.Y. Mellon v Dougherty, 63 Misc. 3d 216, 92 N.Y.S.3d 603, 2019 N.Y. Misc. LEXIS 241 (N.Y. Sup. Ct. 2019).

8. Bills, receipts, invoices and the like

Invoices from building supply houses were admissible, as business records, in action by masonry contractor seeking recovery for improvements and repairs done under oral “cost plus” contract. Lewis v Barsuk, 55 A.D.2d 817, 389 N.Y.S.2d 952, 1976 N.Y. App. Div. LEXIS 15626 (N.Y. App. Div. 4th Dep't 1976).

In an accident by a developer against a village to recover the cost of installing a sewer line following the village’s refusal to run a sewer line to the lower easterly edge of plaintiff’s lands, in which the sole issue was whether reaffirmation of the original resolution by the village board committed it only to provide utility services to the easterly boundaries of plaintiff’s property at which location 13 townhouses had been constructed, or, as the developer contended, to provide utility services to the entire project of 31 townhouses on two different levels, the trial court erred in excluding the testimony of the developer’s president relating to what he had told board members about the two levels of construction, and in excluding the testimony of a man who was the mayor of the village at the time the subject resolution had been passed, where the phrase “at the easterly bounds of their lands” was ambiguous, and where, thus, extrinsic evidence should have been admitted to assist in the search for the phrase’s intended meaning; moreover, the exclusions constituted reversible error entitling plaintiff to a new trial; finally, the trial court erred in sustaining the village’s objection to the receipt in evidence of a bill from the sewer corporation to plaintiff for services rendered in constructing the sewer to the lower level of plaintiff’s property, since the bill was relevant to the issue of damages, and since the bill was admissible in evidence under CPLR § 4518, the business record exception to the hearsay rule. Rock Ridge Townhouses, Inc. v Tupper Lake, 99 A.D.2d 914, 472 N.Y.S.2d 521, 1984 N.Y. App. Div. LEXIS 17323 (N.Y. App. Div. 3d Dep't 1984).

In an action to recover wages, commissions, and vacation pay based upon breach of contract of employment, although the trial court erred in refusing to admit, pursuant to CPLR § 4518(a), defendant’s invoices and commission tallies on which plaintiff’s commissions had been based, the exclusion of the records was harmless error in view of the testimony of defendant’s vice president, which the trial court found to be credible, and upon which it based its decision.

Shapiro v Ultrasonic Corp. of America, Inc., 104 A.D.2d 363, 478 N.Y.S.2d 693, 1984 N.Y. App. Div. LEXIS 19834 (N.Y. App. Div. 2d Dep't 1984).

In prosecution for robbery in first degree, record book of bar where defendant claimed he was on day of robbery was not proper business record since normal procedures were not followed inasmuch as record book was offered to support alibi defense that defendant paid bar tab on day in question, and bar employee who made record entries testified that normally she did not date bills, but that she did not follow her usual procedure in defendant’s case, and admitted that there was no indication in book as to date bills were marked paid. People v Henson, 113 A.D.2d 954, 493 N.Y.S.2d 851, 1985 N.Y. App. Div. LEXIS 52574 (N.Y. App. Div. 2d Dep't 1985).

Delivery tickets and invoices prepared from information contained in tickets as to amount, location and date of fuel delivered or other services rendered are admissible under business records exception based upon testimony of president of delivery firm who, while lacking personal knowledge of deliveries themselves, is able through testimony to establish that information provided in tickets is fully incorporated into records made in regular course of business through billing process. Plymouth Rock Fuel Corp. v Leucadia, Inc., 117 A.D.2d 727, 498 N.Y.S.2d 453, 1986 N.Y. App. Div. LEXIS 53002 (N.Y. App. Div. 2d Dep't 1986).

Supreme Court properly admitted time and cash disbursement records at hearing held to determine reasonable attorneys’ fees in declaratory judgment action, even though clerk who compiled records was not called to testify at hearing, and underlying records from which disbursement records were compiled were not produced, since such facts went to weight and not admissibility of records. Commerce & Industry Ins. Co. v Sciales, 132 A.D.2d 516, 517 N.Y.S.2d 258, 1987 N.Y. App. Div. LEXIS 49047 (N.Y. App. Div. 2d Dep't), app. dismissed, 70 N.Y.2d 797, 522 N.Y.S.2d 114, 516 N.E.2d 1227, 1987 N.Y. LEXIS 19378 (N.Y. 1987).

Admission into evidence of uncertified and unauthenticated hospital and medical bills in non-jury trial, although error, was harmless where testimony of plaintiff and her physician established reasonable value of medical services for which plaintiff was responsible. Hahn v Niagara Falls,

143 A.D.2d 517, 533 N.Y.S.2d 37, 1988 N.Y. App. Div. LEXIS 10650 (N.Y. App. Div. 4th Dep't 1988).

Court erred in admitting store receipts as evidence of value of stolen VCR and television since no foundation was laid by qualified custodian to establish that they were made in ordinary course of business and thus they constituted inadmissible hearsay; however, error was harmless in light of other overwhelming evidence of value. People v Teague, 145 A.D.2d 911, 536 N.Y.S.2d 293, 1988 N.Y. App. Div. LEXIS 13915 (N.Y. App. Div. 4th Dep't 1988), app. denied, 73 N.Y.2d 983, 540 N.Y.S.2d 1017, 538 N.E.2d 369, 1989 N.Y. LEXIS 1699 (N.Y. 1989).

At hearing to determine whether defendant physician had been served with process on particular date, in which physician contended that he had been away on trip at time of alleged service, physician’s credit card receipts and copies of airline tickets were improperly admitted in evidence under business records exception to hearsay rule. Wern v D'Alessandro, 219 A.D.2d 646, 631 N.Y.S.2d 425, 1995 N.Y. App. Div. LEXIS 9883 (N.Y. App. Div. 2d Dep't 1995).

Business paper receipt from another business entity falls outside scope of CLS CPLR § 4518(a). Colonno v Executive I Assocs., 228 A.D.2d 859, 644 N.Y.S.2d 105, 1996 N.Y. App. Div. LEXIS 6667 (N.Y. App. Div. 3d Dep't 1996).

Photocopies of 2 pages of forensic laboratory log book and laboratory submission receipts were properly admitted against drug defendant as business records where proper foundation was laid. People v Gentle, 245 A.D.2d 463, 666 N.Y.S.2d 455, 1997 N.Y. App. Div. LEXIS 14136 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 973, 672 N.Y.S.2d 852, 695 N.E.2d 721, 1998 N.Y. LEXIS 1560 (N.Y. 1998).

In action for breach of contract to pay plaintiff company to complete installation of heating system for defendants’ residence, billing statements prepared by plaintiff’s president on basis of job books maintain by plaintiff’s employees were admissible as business records where each employee had his or her own job book, in which he or she would record number of hours worked

on particular project each day, and president’s lack of personal knowledge of accuracy of job books went to weight, not admissibility, of billing statements. William Conover, Inc. v Waldorf, 251 A.D.2d 727, 673 N.Y.S.2d 770, 1998 N.Y. App. Div. LEXIS 6452 (N.Y. App. Div. 3d Dep't 1998).

Motion for summary judgment in favor of an alleged creditor seeking payment on a creditor card debt was error because, inter alia, account statements authenticated as business records of the plaintiff or its purported assignor. PRA III, LLC v Gonzalez, 54 A.D.3d 917, 864 N.Y.S.2d 140, 2008 N.Y. App. Div. LEXIS 6989 (N.Y. App. Div. 2d Dep't 2008).

Trial court erred in holding that increases made to the rent-stabilized rent that were based upon improvements in the individual apartment before the tenants occupied it were subject to challenge, as there was sufficient evidence of the improvements using the base date and the owner's properly admitted business records, and no fraud was shown. Taylor v 72A Realty Assoc., L.P., 151 A.D.3d 95, 53 N.Y.S.3d 309, 2017 N.Y. App. Div. LEXIS 4113 (N.Y. App. Div. 1st Dep't 2017), modified, aff'd, 35 N.Y.3d 332, 154 N.E.3d 972, 130 N.Y.S.3d 759, 2020 N.Y. LEXIS 779 (N.Y. 2020).

Trial court erred in admitting into evidence certain credit card statements and in relying on those statements when calculating the equitable distribution of the marital credit card debt because the wife failed to lay a proper foundation for the admission of those documents as business records. Iwasykiw v Starks, 179 A.D.3d 1485, 118 N.Y.S.3d 837, 2020 N.Y. App. Div. LEXIS 824 (N.Y. App. Div. 4th Dep't 2020).

On inquest to ascertain damages pursuant to CLS CPLR § 3215 and CLS UR NYC Civil Ct § 208.32, after defendants’ default in subrogation action for damage to automobile, affidavit of plaintiff’s automobile damage appraiser was admissible, as record prepared in regular course of business, in lieu of courtroom testimony to prove damages in excess of $2,000, since $2,000 limitation of CLS CPLR § 4533-a for admissibility of self-authenticating bill or invoice does not preclude submission of evidence of damages otherwise admissible under common-law and

statutory rules. Travelers Indem. Co. v City of New York, 161 Misc. 2d 477, 615 N.Y.S.2d 220, 1994 N.Y. Misc. LEXIS 260 (N.Y. Civ. Ct. 1994).

Collector Tour of Duty Reports, consisting of toll collector's keyboard entries, axle count of vehicles made by treadle in roadway, and sum deposited by collector at end of each tour, were properly admitted as business records on basis of Port Authority supervisor's foundation testimony in criminal case against collector, although reports were based partly on information provided by bank. People v Markowitz, 187 Misc. 2d 266, 721 N.Y.S.2d 758, 2001 N.Y. Misc. LEXIS 28 (N.Y. Sup. Ct. 2001).

In an action to recover no-fault benefits under automobile insurance policies, a medical provider was not required to demonstrate the admissibility of its billing records or to prove the truth of their content under the business records exception to the hearsay rule. New York Hosp. Med. Ctr. of Queens v QBE Ins. Corp., 114 A.D.3d 648, 979 N.Y.S.2d 694, 2014 N.Y. App. Div. LEXIS 633 (N.Y. App. Div. 2d Dep't 2014).

In a suit asserting breach of a revenue purchase agreement, plaintiff failed to establish the foundational requirements for admitting the purported business records under the business records exception to hearsay because the "Payment History" document did not appear to be a routine business record, but rather a document created for litigation purposes after the alleged breach and plaintiff's affiant did not attest that it was the regular course of Plaintiff's business, as required. Robin Funding Group LLC v Synergy Crosslinx Holding, LLC, 84 Misc. 3d 1242(A), 222 N.Y.S.3d 386, 2024 N.Y. Misc. LEXIS 24689 (N.Y. Sup. Ct. 2024).

9. Electronic records, including computer printouts

Computer printouts bearing on equalization rate were admissible, in inequality proceedings, under the business entry rule. Ed Guth Realty, Inc. v Gingold, 34 N.Y.2d 440, 358 N.Y.S.2d 367, 315 N.E.2d 441, 1974 N.Y. LEXIS 1458 (N.Y. 1974).

Trial court properly admitted a record of testing of the simulator solution used during the breath test administered to defendant, despite its lack of a verification to show the record could not be tampered with, as N.Y. C.P.L.R. 4539(b) did not apply to documents like the one at issue that were originally created in electronic form; the record was admissible under this section, which was the applicable statute. People v Kangas, 28 N.Y.3d 984, 63 N.E.3d 1133, 41 N.Y.S.3d 189, 2016 N.Y. LEXIS 3180 (N.Y. 2016).

In criminal prosecution arising from Medicaid fraud, computer print-outs were properly admitted in evidence under business record exception to hearsay rule, even though they had been specifically created for trial and were not generated in ordinary course of business, since print-outs were generated from computer tapes which had been made in regular course of business from data entered into computer at time of each fraudulent transaction; fact that print-outs were produced after commencement of criminal proceeding did not affect their admissibility. People v Weinberg, 183 A.D.2d 932, 586 N.Y.S.2d 132, 1992 N.Y. App. Div. LEXIS 7600 (N.Y. App. Div. 2d Dep't), app. denied, 80 N.Y.2d 977, 591 N.Y.S.2d 147, 605 N.E.2d 883, 1992 N.Y. LEXIS 4366 (N.Y. 1992).

In action by plaintiff that operated placement and recruitment firm against former recruiter who allegedly breached non-competition clause of his employment contract, notes contained in plaintiff’s database records were properly admitted under CLS CPLR § 4518(a) where plaintiff’s recruiters were under business duty to contemporaneously record statements that were made and events that took place during their contacts with job applicants, and they regularly relied on such information in matching applicants with possible employers; lack of personal knowledge of person entering information into database goes to its weight, not admissibility. Pencom Sys. v Shapiro, 237 A.D.2d 144, 658 N.Y.S.2d 258, 1997 N.Y. App. Div. LEXIS 2369 (N.Y. App. Div. 1st Dep't 1997).

In prosecution for felony aggravated unlicensed operation of motor vehicle, People satisfied requirements of CLS CPLR § 4518 with respect to admission of Department of Motor Vehicle (DMV) documents, including computer-generated printouts of defendant’s driving record, where

DMV administrative law judge credibly testified that, based on his training and experience, he was familiar with how DMV made and kept its records, that documents in question were made and kept in regular course of business, that it was DMV's course of business to make and keep such documents, and that entries in such documents were made contemporaneously with events stated therein. People v Wray, 183 Misc. 2d 444, 704 N.Y.S.2d 787, 2000 N.Y. Misc. LEXIS 35 (N.Y. Sup. Ct. 2000).

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).

Exhibit compiled from the New York State Office of Real Property Services (ORPS) SalesWeb was admissible under the common-law public record hearsay exception, if authenticated, and was an electronic record, admissible under N.Y. C.P.L.R. 4518(a) and N.Y. State Tech. Law § 306, as a witness testified as to the manner in which she downloaded, printed, and copied the electronic record of the ORPS SalesWeb; in so doing, the ORPS SalesWeb was taken from its electronic form and turned into a tangible exhibit. 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).

Trespass notices issued to defendant by the city housing authority and attached to the criminal complaints against him qualified as business records under the exception to the hearsay rule, and as this section allowed the admission into evidence of electronic records that otherwise qualified as a business records, the absence of a signature on the copy of the notices, which stated "signature on file," did not preclude their admission. People v Abraham, 51 Misc. 3d 755, 24 N.Y.S.3d 894, 2016 N.Y. Misc. LEXIS 388 (N.Y. City Crim. Ct. 2016).

While the recorded conversation between an investigator and a witness was authenticated it was not admissible because it did not meet criteria in the CPLR and State Technology Law, in that the investigator failed to describe if the record-keeping system permitted additions, deletions or changes without record of it or how tampering was prevented. Vrlaku v Plaza Constr. Corp., 57 Misc. 3d 643, 62 N.Y.S.3d 894, 2017 N.Y. Misc. LEXIS 3202 (N.Y. Sup. Ct.), dismissed in part, 57 Misc. 3d 1215(A), 71 N.Y.S.3d 925, 2017 N.Y. Misc. LEXIS 4159 (N.Y. Sup. Ct. 2017).

10. Financial reports; tax records

In hearing on support modification, Family Court's purportedly erroneous introduction of husband's wage statement without necessary foundation having been laid as required in CLS CPLR § 4518 was insufficient reason to disturb court's upward modification of support order favoring wife where any error was of little consequence since statement largely repeated evidence already before court from respondent's own testimony and his financial affidavit. Pologa v Pologa, 124 A.D.2d 455, 507 N.Y.S.2d 555, 1986 N.Y. App. Div. LEXIS 61436 (N.Y. App. Div. 3d Dep't 1986).

Evidence was sufficient to prove damages, in action for breach of contract in which defendant had agreed to reimburse contractor for sales taxes incurred, where contractor produced witness who authenticated document designated as "summary of tax liability" and who testified that it was duty of contractor's accounting department to prepare such documents in regular course of its business, and document contained notation that $11,660 in sales tax had been incurred, and where other documentary and testimonial evidence showed that such taxes had been paid. Flour City Architectural Metals Corp. v John Gallin & Son, Inc., 127 A.D.2d 559, 511 N.Y.S.2d 362, 1987 N.Y. App. Div. LEXIS 43028 (N.Y. App. Div. 2d Dep't 1987).

On motion for summary judgment, court erred in refusing to consider financial statement of plaintiff's parent corporation introduced through affidavit of parent corporation's chief financial officer, since such statement was business record that could be deemed self-authenticating.

Niagara Frontier Transit Metro Sys. v County of Erie, 212 A.D.2d 1027, 623 N.Y.S.2d 33, 1995 N.Y. App. Div. LEXIS 1905 (N.Y. App. Div. 4th Dep't 1995).

In prosecution for second degree conspiracy, attempted first degree assault, second degree use of firearm, third and fourth degree possession of controlled substance, and second degree use of drug paraphernalia, employment application and W-4 tax form completed by defendant's wife were admissible under business records exception to hearsay rule where (1) application and forms contained information relevant to connecting defendant to drug location, (2) although wife was not yet employee of business at time of her application, she was in process of becoming employee and was under business duty to accurately report her home address and references, (3) wife knew that hiring company would rely on accuracy of subject information, especially because forms stated that false information would be grounds for rejection of application or termination of employment, and (4) maintaining accurate personnel and tax records is necessary function of virtually any business. People v McKissick, 281 A.D.2d 212, 721 N.Y.S.2d 646, 2001 N.Y. App. Div. LEXIS 2228 (N.Y. App. Div. 1st Dep't), app. denied, 96 N.Y.2d 921, 732 N.Y.S.2d 638, 758 N.E.2d 664, 2001 N.Y. LEXIS 3952 (N.Y. 2001).

It was error to admit payroll records under N.Y. C.P.L.R. 4518(a) through a school district employee, who was not involved in the preparation of the payroll records, and had no knowledge of whether the information in the records was accurate since: (1) the records had been submitted by subcontractor two to subcontractor one, (2) subcontractor one had submitted them for approval to a school district's architect, and (3) the architect had submitted them to the school district; the mere filing of papers received from other entities, even if they were retained in the regular course of business, did not qualify the documents as business records because the papers were not made in the regular course of business of the school district, and the school district's employee could not provide the necessary foundation testimony. Lodato v Greyhawk N. Am., LLC, 39 A.D.3d 494, 834 N.Y.S.2d 239, 2007 N.Y. App. Div. LEXIS 4307 (N.Y. App. Div. 2d Dep't 2007).

11. Insurance records

Purported notice of cancellation of insurance policy was properly excluded because no foundation was made for its reception by testimony that it was the regular course of the insurer's business to record cancellation notices and evidence of the issuance and mailing of such notices within a reasonable time. Moodie v American Casualty Co., 28 A.D.2d 946, 281 N.Y.S.2d 709, 1967 N.Y. App. Div. LEXIS 3471 (N.Y. App. Div. 3d Dep't 1967).

In action by nieces and nephews to recover proceeds of three policies on life of uncle on theory that such policies, which had been destroyed by insurer in accordance with its internal procedures, provided that nieces and nephews were to receive proceeds on death of uncle's widow, certificate, which had been prepared by insurer in ordinary course of business and which purportedly had been prepared in conformity with policies and applicable agreement therein that widow was empowered to receive the principal on demand, was admissible under business records rule. Rachlin v New York Life Ins. Co., 45 A.D.2d 884, 358 N.Y.S.2d 16, 1974 N.Y. App. Div. LEXIS 4368 (N.Y. App. Div. 2d Dep't 1974).

To establish foundation for introduction of certain files as business records, insurer was not required to produce, as witness, file clerk who was custodian of files; it was sufficient that insurer produced witness with personal knowledge of insurer's relevant practices and procedures. Vermont Comm'r of Banking & Ins. v Welbilt Corp., 133 A.D.2d 396, 519 N.Y.S.2d 390, 1987 N.Y. App. Div. LEXIS 49890 (N.Y. App. Div. 2d Dep't 1987), app. dismissed, 70 N.Y.2d 1002, 526 N.Y.S.2d 438, 521 N.E.2d 445, 1988 N.Y. LEXIS 109 (N.Y. 1988).

Insurer's policy file folders should have been admitted in evidence as business records on testimony that folders were marked with claim numbers corresponding to separate claims files in regular course of insurer's business and that it was regular course of insurer's business to make such entries; however, contents of file folders were inadmissible where they included extraneous documents and there was no showing that each document qualified as business record. Vermont Comm'r of Banking & Ins. v Welbilt Corp., 133 A.D.2d 396, 519 N.Y.S.2d 390, 1987

N.Y. App. Div. LEXIS 49890 (N.Y. App. Div. 2d Dep't 1987), app. dismissed, 70 N.Y.2d 1002, 526 N.Y.S.2d 438, 521 N.E.2d 445, 1988 N.Y. LEXIS 109 (N.Y. 1988).

Although court improperly received claims form submitted by victim to her insurance company as business record in prosecution for second degree criminal mischief and second degree reckless endangerment, error was harmless since proof of value was derived not from claims form submitted by victim but from appraisal forms which were properly received into evidence. People v Caufield, 148 A.D.2d 985, 539 N.Y.S.2d 221, 1989 N.Y. App. Div. LEXIS 2567 (N.Y. App. Div. 4th Dep't 1989).

In insurers' action for declaratory judgment involving their duty to defend and indemnify insured, insurers were not precluded from introducing audiotapes of their investigator's interviews with insured's principal, even though those tapes for some reason were never played, where judicial hearing officer properly advised insurers that he would have to listen to tapes before deciding whether transcripts, which contained many omissions, fairly and accurately reflected subject conversations. Paramount Ins. Co. v Eli Constr. Gen. Contr., 245 A.D.2d 38, 665 N.Y.S.2d 857, 1997 N.Y. App. Div. LEXIS 12526 (N.Y. App. Div. 1st Dep't 1997).

In an insurer's summary judgment motion with respect to its request for a declaration regarding its coverage duties, an affidavit from the insurer's Office Services Supervisor was sufficient to lay a proper foundation for the business records attached to it. Preferred Mut. Ins. Co. v Donnelly, 111 A.D.3d 1242, 974 N.Y.S.2d 682, 2013 N.Y. App. Div. LEXIS 7363 (N.Y. App. Div. 4th Dep't 2013), aff'd, 22 N.Y.3d 1169, 985 N.Y.S.2d 470, 8 N.E.3d 847, 2014 N.Y. LEXIS 660 (N.Y. 2014).

Assignee was entitled to summary judgment in its claim against an insurer to recover assigned first-party no-fault benefits because it proved submission of claim forms and that payment of no-fault benefits was overdue pursuant to N.Y. Ins. Law § 5106(a); the affidavit submitted by assignee established that the forms, which were annexed to the affidavit, constituted evidence in admissible form. The insurer failed to show that its denial of claim forms were timely mailed, and the lower court's ruling that discovery was necessary to obtain facts relevant to this precluded

defense was improper. Bath Med. Supply, Inc. v Allstate Indem. Co., 902 N.Y.S.2d 875, 27 Misc. 3d 92, 2010 N.Y. Misc. LEXIS 318 (N.Y. App. Term 2010).

With respect to a no-fault provider's claim under N.Y. Ins. Law § 5106(a), it was properly denied summary judgment where it failed to establish its prima facie entitlement to relief, as its claim forms were not within the business records hearsay exception under N.Y. C.P.L.R. 4518(a); the records were also not shown to have been inherently reliable. Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co., 919 N.Y.S.2d 759, 31 Misc. 3d 21, 2011 N.Y. Misc. LEXIS 210 (N.Y. App. Term 2011), aff'd in part, modified, 114 A.D.3d 33, 977 N.Y.S.2d 292, 2013 N.Y. App. Div. LEXIS 8374 (N.Y. App. Div. 2d Dep't 2013).

Treatment records of obligor parent's psychiatrist were not admissible as business records, since they had not been kept as a matter of routine but related to a particular patient's treatment, to rebut the obligee parent's prima facie case of failure to pay child support, which had been established by the simple fact of failure to pay. Matter of Bronstein-Becher v Becher, 25 A.D.3d 796, 809 N.Y.S.2d 140, 2006 N.Y. App. Div. LEXIS 953 (N.Y. App. Div. 2d Dep't 2006).

Because the trial court could credit the testimony of a witness and rely upon it to conclude that, pursuant to N.Y. C.P.L.R. 4518(a), the notice of cancellation sent to the insured complied with the applicable statutory print size requirements, the insurer's N.Y. C.P.L.R. art. 75 petition to permanently stay arbitration of an uninsured motorist claim was properly denied. Matter of Halycon Ins. Co. v Fox, 44 A.D.3d 662, 843 N.Y.S.2d 165, 2007 N.Y. App. Div. LEXIS 10419 (N.Y. App. Div. 2d Dep't 2007).

In a dispute over plaintiff's right to uninsured motorist benefits under her son's policy, the son's statement to his insurer's investigator that plaintiff stayed with the son for a weekend every other month was not admissible under N.Y. C.P.L.R. 4518(a), the business record exception to the hearsay rule, because the son lacked a business duty, as opposed to contractual duty, to report to the insurer in the course of its investigation as to coverage. Hochhauser v Elec. Ins. Co., 46 A.D.3d 174, 844 N.Y.S.2d 374, 2007 N.Y. App. Div. LEXIS 11270 (N.Y. App. Div. 2d Dep't 2007).

12. Landlord and tenant records

Landlord's "rent calculation sheet," allegedly showing base rent for rent-stabilized apartment, was not business record under CLS CPLR § 4518 since it was prepared only once and not in regular course of landlord's business but by employee of landlord's attorney during reorganization of lease files; thus, State Division of Housing and Community Renewal's decision to reject it as proof of base rent during rent-stabilization hearing was neither arbitrary nor capricious. Kraus Management, Inc. v State, Div. of Housing & Community Renewal, Office of Rent Admin., 137 A.D.2d 689, 524 N.Y.S.2d 779, 1988 N.Y. App. Div. LEXIS 1828 (N.Y. App. Div. 2d Dep't 1988).

In holdover summary proceeding against occupant of rent-controlled apartment, court properly refused to admit unsigned, undated, handwritten document purportedly written by predecessor landlord and acknowledging occupant's tenancy. Har Holding Co. v Feinberg, 182 Misc. 2d 180, 697 N.Y.S.2d 903, 1999 N.Y. Misc. LEXIS 495 (N.Y. App. Term 1999).

Affidavits in the landlords' motions for ex parte default judgments and issuance of warrants of eviction against the tenants did not comply with N.Y. C.P.L.R. 4518 or support a conclusion that any tenant defaulted in the payment of the sums demanded by the landlords because the affidavits were sufficiently identical to create a suspicion of having been "robo-signed.". 2132 Presidential Assets, LLC v Carrasquillo, 965 N.Y.S.2d 694, 39 Misc. 3d 756, 2013 N.Y. Misc. LEXIS 1054 (N.Y. Civ. Ct. 2013).

As a landlord had not met its evidentiary burden in proving, through admissible evidence, the existence of an underlying debt, its motion for summary judgment was denied; the affidavit of the landlord's managing agent the landlord sought to admit in support of its motion was insufficient because it failed to properly authenticate an exhibit as a business record. 18 E. 42st St. Partners LLC v Gamlieli, 2023 N.Y. Misc. LEXIS 2206 (N.Y. Sup. Ct. 2023).

13. Phone company records

Trial court's admission of subscriber information in prepaid cell phone records as nonhearsay evidence located within a business record was upheld because the subscriber information was properly admitted for a limited, nonhearsay purpose of showing that the individuals who activated the cell phone numbers identified themselves as defendant and his accomplice and that someone with defendant's name gave certain pedigree information that was otherwise associated with him. People v Patterson, 28 N.Y.3d 544, 68 N.E.3d 1242, 46 N.Y.S.3d 511, 2016 N.Y. LEXIS 3857 (N.Y. 2016).

Records of 911 telephone call made by defendant to police after shooting, in which defendant claimed that deceased had been shot by unidentified person, was not admissible in evidence as business record since defendant was under no duty to report shooting to police, and in order for proof to qualify for admission in evidence under business record exception to hearsay rule, it must be demonstrated that declarant was under duty to report occurrence to entrant. People v Wilson, 123 A.D.2d 457, 506 N.Y.S.2d 760, 1986 N.Y. App. Div. LEXIS 60211 (N.Y. App. Div. 2d Dep't 1986).

Defendants' Telephone Inquiry Form was properly admissible as business record. Abdelrazig v Essence Communs., 225 A.D.2d 498, 639 N.Y.S.2d 811, 1996 N.Y. App. Div. LEXIS 3284 (N.Y. App. Div. 1st Dep't), app. denied, 88 N.Y.2d 810, 649 N.Y.S.2d 377, 672 N.E.2d 603, 1996 N.Y. LEXIS 2726 (N.Y. 1996).

Telephone company investigator did not provide necessary foundation for admission of another telephone carrier's record that showed originating number of pay phone call, in prosecution for first degree falsely reporting incident, where he failed to testify that he had such knowledge of other carrier's recordkeeping procedures that he could state that record was made in regular course of its business and contemporaneously to phone call. People v Surdis, 275 A.D.2d 553, 711 N.Y.S.2d 875, 2000 N.Y. App. Div. LEXIS 8650 (N.Y. App. Div. 3d Dep't), app. denied, 95 N.Y.2d 908, 716 N.Y.S.2d 649, 739 N.E.2d 1154, 2000 N.Y. LEXIS 3722 (N.Y. 2000).

14. Time sheets, log books and the like

In action against labor union for injuries sustained when security guard was hit by brick thrown by union member as he escorted truck through picket line, employer's security log was properly admitted as business record prepared in ordinary course of business inasmuch as union conceded that testimony of employer's manager established that entries in log were contemporaneously prepared by employer personnel and recorded all incidents relating to strike which were reported by other employer personnel at various locations. Browne v International Bhd. of Teamsters, Local Union 851, 203 A.D.2d 13, 609 N.Y.S.2d 237, 1994 N.Y. App. Div. LEXIS 3291 (N.Y. App. Div. 1st Dep't 1994).

Attorneys' time records were properly admitted in evidence under business records exception to hearsay rule (CLS CPLR § 4518(a)). Shaw, Licitra, Eisenberg, Esernio & Schwartz, P.C. v Gelb, 221 A.D.2d 331, 633 N.Y.S.2d 212, 1995 N.Y. App. Div. LEXIS 11248 (N.Y. App. Div. 2d Dep't 1995), app. denied, 87 N.Y.2d 810, 642 N.Y.S.2d 858, 665 N.E.2d 660, 1996 N.Y. LEXIS 405 (N.Y. 1996).

In second degree murder trial, employee timesheet pertaining to defendant's alibi witness was properly admitted in evidence under business record exception to hearsay rule. People v Gecetchkori, 236 A.D.2d 556, 654 N.Y.S.2d 643, 1997 N.Y. App. Div. LEXIS 1309 (N.Y. App. Div. 2d Dep't), app. denied, 89 N.Y.2d 1093, 660 N.Y.S.2d 386, 682 N.E.2d 987, 1997 N.Y. LEXIS 1936 (N.Y. 1997).

Photocopies of 2 pages of forensic laboratory log book and laboratory submission receipts were properly admitted against drug defendant as business records where proper foundation was laid. People v Gentle, 245 A.D.2d 463, 666 N.Y.S.2d 455, 1997 N.Y. App. Div. LEXIS 14136 (N.Y. App. Div. 2d Dep't 1997), app. denied, 91 N.Y.2d 973, 672 N.Y.S.2d 852, 695 N.E.2d 721, 1998 N.Y. LEXIS 1560 (N.Y. 1998).

In a case in which the tenant was struck by the door of a service elevator, the trial court erred in refusing to admit the elevator logbook into evidence as the doorman testified that the log was a

record made and kept in the ordinary course of business in which problems and complaints with the elevator would be notated, and that he was under a business duty to make such entries; and the error was not harmless as the exclusion of the log prevented the jury from fully learning about, and having access during deliberations, to relevant evidence establishing the nature and extent of the problems with the service elevator. Barkley v Plaza Realty Invs. Inc., 149 A.D.3d 74, 49 N.Y.S.3d 105, 2017 N.Y. App. Div. LEXIS 1643 (N.Y. App. Div. 1st Dep't 2017).

Defendant is not granted habeas corpus relief from conviction of second-degree murder and first-degree robbery, where (1) court admitted memorandum of night watchman at plant at which murder occurred, (2) both state trial and appellate courts found memorandum admissible under business records exception to hearsay rule, and (3) watchman died before trial, because (1) petitioner did not show that courts' findings are not entitled to presumption of correctness, (2) findings do not lack fair support in record, and (3) petitioner was not denied Sixth Amendment rights since watchman was deceased. Admission in evidence of memorandum prepared by watchman on duty on night of murder at industrial plant did not violate defendant's right to confrontation where watchman was deceased at time of trial and memorandum fell within New York's business records exception to hearsay rule. Memorandum prepared by watchman on duty on night of criminal incident at industrial plant, recounting unusual circumstances at plant that night, was admissible under business records exception to hearsay rule where it was prepared 3 days after incident, watchmen were required to fill out reports of unusual incidents, and plant vice-president testified that to his knowledge no one had instructed watchman to prepare memorandum. Perfetto v Hoke, 898 F. Supp. 105, 1995 U.S. Dist. LEXIS 13172 (E.D.N.Y. 1995).

15. Title documents, including bills of lading

Bills of lading, shipper's export declarations and way-bills, introduced to demonstrate the basis for each expenditure, were properly admissible under the business records rule. State v

Samfred Beltline Corp., 31 A.D.2d 865, 297 N.Y.S.2d 466, 1969 N.Y. App. Div. LEXIS 4625 (N.Y. App. Div. 3d Dep't 1969).

In an action for damages for breach of contract, the trial court committed reversible error in admitting freight bills from a common carrier as evidence that the goods ordered from plaintiff by defendant had been delivered to defendant's lessee since the mere filing of the bills with plaintiff did not make them business records of plaintiff, and plaintiff's clerk could not testify from personal knowledge that they were made in the regular course of the carrier's business. Standard Textile Co. v National Equipment Rental, Ltd., 80 A.D.2d 911, 437 N.Y.S.2d 398, 1981 N.Y. App. Div. LEXIS 10795 (N.Y. App. Div. 2d Dep't 1981).

In divorce action, where husband claimed that he was record holder of certain shares of stock "subject to the rights of, for the benefit of, and as nominee of" his father, such agreement was properly received in evidence as business record through testimony of corporate attorney who drafted document at time of nomination in ordinary course of business. Merzon v Merzon, 210 A.D.2d 462, 620 N.Y.S.2d 832, 1994 N.Y. App. Div. LEXIS 13205 (N.Y. App. Div. 2d Dep't 1994).

A freight bill, which is also a delivery receipt, being a record kept in the regular course of business is admissible, as are the entries thereon to prove the delivery. Eazor Express, Inc. v Lanza, 60 Misc. 2d 686, 303 N.Y.S.2d 571, 1969 N.Y. Misc. LEXIS 1288 (N.Y. County Ct. 1969).

16. Utility meter readings

In controversy over amount of flat rate charged for school district's water usage, readings from water meters installed in school in year after disputed charge became effective were admissible as business records under CPLR § 4518, subd a. Central School Dist. v Schoharie, 42 A.D.2d 1008, 348 N.Y.S.2d 212, 1973 N.Y. App. Div. LEXIS 3402 (N.Y. App. Div. 3d Dep't 1973).

17. Other and miscellaneous records

In prosecution for conspiracy and criminal usury, testimony of People's expert witness failed to satisfy foundation requirements of business records exception to hearsay rule (CLS CPLR § 4518), where testimony identified 2 miniature pocket diaries as master records of loan-shark kept in regular course of business, but did not qualify normal record-keeping practices as to such matters as usurer's use of code names and times for making entries; even assuming expert's testimony established diaries as records kept in criminal usury business, it did not indicate that they were made by their author pursuant to established procedures for routine, habitual, and systematic making of records. Fact that pocket diaries of loan-shark were records of criminal enterprise did not disqualify them from consideration as business records admissible as hearsay exception under CLS CPLR § 4518, in view of legislature's broad definition of "business" and potential that criminal enterprise could maintain its records with such regularity and method as to leave no doubt of accuracy and trustworthiness of diaries in question. People v Kennedy, 68 N.Y.2d 569, 510 N.Y.S.2d 853, 503 N.E.2d 501, 1986 N.Y. LEXIS 21171 (N.Y. 1986).

Trial court in personal injury case should not have admitted into evidence defendant transit authority's entire internal rule book and manual where they contained irrelevant material which was not relied on by parties' experts and which imposed higher standard of proof on defendant than that imposed by law. Rivera v New York City Transit Authority, 77 N.Y.2d 322, 567 N.Y.S.2d 629, 569 N.E.2d 432, 1991 N.Y. LEXIS 213 (N.Y. 1991).

Fact that psychologist who prepared IQ test report was not himself employee of facility for whom report was prepared did not defeat its admission under business records exception to hearsay rule where preparer was acting on behalf of facility and in accordance with its requirements when he prepared report, and he was not complete outsider. Testimony of rape victim's counselor at facility for mentally retarded adults established requisite foundation for admission of IQ test report, prepared at time of victim's admission into facility, under business records exception to hearsay rule, where counselor stated that report conformed with statutory and

regulatory requirements with which she was familiar, that no client was accepted into facility without such report, and that such reports were routinely relied on by facility in making determinations regarding its clients. People v Cratsley, 86 N.Y.2d 81, 629 N.Y.S.2d 992, 653 N.E.2d 1162, 1995 N.Y. LEXIS 2232 (N.Y. 1995).

Notwithstanding that property pledged was shown to have been the property allegedly stolen, and that pawnbroker's form which was signed with defendant's name set forth addresses at which defendant had resided, the form was admissible in larceny prosecution only to prove the pledge by one holding himself out as defendant and, in absence of any other evidence that defendant was the pledgor, the form was not receivable to prove that defendant was the pledgor. People v O'Briskie, 46 A.D.2d 779, 360 N.Y.S.2d 459, 1974 N.Y. App. Div. LEXIS 3724 (N.Y. App. Div. 2d Dep't 1974).

An exhibit which was objected to as being an ombudsman report was properly discoverable as being reports made in normal course of business. Watson v State, 53 A.D.2d 798, 385 N.Y.S.2d 170, 1976 N.Y. App. Div. LEXIS 13598 (N.Y. App. Div. 3d Dep't 1976).

In an action to recover the balance due on a parol contract for landscaping services, pages of plaintiff's ledger were properly admitted into evidence as business records where there was sufficient testimony to enable the trial court to find that the ledger was a record kept in the ordinary course of business; but since certain erroneous figures in the ledger had resulted in an erroneous damages award, the award would be modified to avoid unjust enrichment to the plaintiff. Resnick v Levine, 80 A.D.2d 699, 436 N.Y.S.2d 448, 1981 N.Y. App. Div. LEXIS 10407 (N.Y. App. Div. 3d Dep't 1981).

In a prosecution for grand larceny arising out of alleged Medicaid over-reimbursement to a nursing home, which was owned and operated by defendant, the loan and exchange ledgers of a yeshiva, which remitted certain payments to defendant to reduce the home's expenditures for supplies, were properly received into evidence under the business records exception to the hearsay rule (CPLR § 4518(a)), where the maker of the source documents was unavailable as a result of his death and the records involved were plainly of a reliable nature; foundational

objections went to weight, rather than to admissibility. People v Klein, 105 A.D.2d 805, 481 N.Y.S.2d 743, 1984 N.Y. App. Div. LEXIS 20925 (N.Y. App. Div. 2d Dep't 1984), aff'd, 65 N.Y.2d 613, 491 N.Y.S.2d 155, 480 N.E.2d 744, 1985 N.Y. LEXIS 14693 (N.Y. 1985).

Diaries were not admissible into evidence where prosecution in criminal usury trial failed to lay sufficient foundation for their introduction in that expert's testimony was confined to his experience with usurers in general, People failed to provide testimony from someone with knowledge of particular usurer's record-keeping procedures that diaries were made in regular course of usury business and that notations were made at or soon after purported transactions occurred, and expert witness testified that in usury business entries were not always recorded at or about time of transaction and that some authors partially predated entries. People v Kennedy, 113 A.D.2d 843, 493 N.Y.S.2d 509, 1985 N.Y. App. Div. LEXIS 52484 (N.Y. App. Div. 2d Dep't 1985), aff'd, 68 N.Y.2d 569, 510 N.Y.S.2d 853, 503 N.E.2d 501, 1986 N.Y. LEXIS 21171 (N.Y. 1986).

Interoffice memorandum prepared by night watchman was admissible as business record in second degree murder trial, to show that defendant was present at premises at which murder occurred, where it was shown that watchman was required to submit such reports as part of his duties, and that he did so in regular course of business within 3 days of murder. People v Perfetto, 133 A.D.2d 127, 518 N.Y.S.2d 662, 1987 N.Y. App. Div. LEXIS 49649 (N.Y. App. Div. 2d Dep't 1987), app. denied, 70 N.Y.2d 959, 525 N.Y.S.2d 843, 520 N.E.2d 561, 1988 N.Y. LEXIS 468 (N.Y. 1988).

In action for breach of oral contract of employment, court properly excluded from evidence personnel records from plaintiff's prior employment since witness did not become custodian of records until several years after events transpired, had no conversations with her predecessor, and had no knowledge of when and by whom notations in question were made. Parrotta v J.F. Hartfield & Co., 159 A.D.2d 453, 553 N.Y.S.2d 133, 1990 N.Y. App. Div. LEXIS 3058 (N.Y. App. Div. 1st Dep't 1990).

Court properly disallowed admission of letter from plaintiff's counsel to treating physician as being outside business record exception to hearsay rule (CLS CPLR § 4518(a)). Colonno v Executive I Assocs., 228 A.D.2d 859, 644 N.Y.S.2d 105, 1996 N.Y. App. Div. LEXIS 6667 (N.Y. App. Div. 3d Dep't 1996).

People failed to prove that value of stolen auto parts exceeded $1,000 where written estimates of victim's auto parts manager, who did not testify at trial, constituted hearsay that did not fit within business records exception of CLS CPLR § 4518(a), and only other evidence of value was affidavit of victim's service director given to police at crime scene, but director testified at trial that he made those estimates "off the top" of his head and that he had not consulted price list or any other source. People v Watkins, 233 A.D.2d 904, 649 N.Y.S.2d 548, 1996 N.Y. App. Div. LEXIS 13394 (N.Y. App. Div. 4th Dep't 1996).

In action for breach of contract, court properly admitted into evidence, under business record exception to hearsay rule, series of weight slips to establish value of goods provided by plaintiff in construction of roadway for defendant. Nannini & Callahan Excavating v Park Rd. Constr. Corp., 234 A.D.2d 352, 651 N.Y.S.2d 334, 1996 N.Y. App. Div. LEXIS 12916 (N.Y. App. Div. 2d Dep't 1996).

Letter from pump system manufacturer's chief engineer, written in response to inquiry from injured worker's employer as to possible causes of accident in which he was sprayed with hot water from pump system, was not produced as result of routine day-to-day operations of manufacturer's business and thus did not fall under business record exception to hearsay rule. Puznowski v Spirax Sarco Inc., 275 A.D.2d 506, 712 N.Y.S.2d 216, 2000 N.Y. App. Div. LEXIS 8436 (N.Y. App. Div. 3d Dep't 2000).

Trial court erred in refusing to allow a medical worker from testifying, on hearsay grounds, that upon his arrival at the scene of an accident plaintiff stated that she had tripped and fallen, as this statement in the ambulance call report would have been admissible as a present sense impression had the witness been permitted to lay the business record foundation for the

document, N.Y. C.P.L.R. 4518(a). Bayne v City of New York, 29 A.D.3d 924, 816 N.Y.S.2d 179, 2006 N.Y. App. Div. LEXIS 7177 (N.Y. App. Div. 2d Dep't 2006).

People failed to establish that certain payroll records were made in regular course of business, or that the documents were made at time of transaction or within a reasonable time thereafter. Documents were thus improperly admitted, and without them, there was insufficient evidence to support welfare fraud conviction. People v Smith, 32 A.D.3d 1255, 821 N.Y.S.2d 540, 2006 N.Y. App. Div. LEXIS 11676 (N.Y. App. Div. 4th Dep't 2006).

Trial court properly determined that letters written by the National Bank of Greece constituted inadmissible hearsay. Xikis v Xikis, 43 A.D.3d 1040, 841 N.Y.S.2d 692, 2007 N.Y. App. Div. LEXIS 9800 (N.Y. App. Div. 2d Dep't 2007), app. denied, 10 N.Y.3d 704, 854 N.Y.S.2d 104, 883 N.E.2d 1011, 2008 N.Y. LEXIS 302 (N.Y. 2008).

Because the two conclusory affidavits and computer printouts purporting to be a lender’s records that were offered in support of the lender’s motion to vacate a default entered against it were inadmissible under N.Y. C.P.L.R. 4518(a), the trial court did not err in denying the lender’s motion to vacate the prior order dismissing its complaint to recover on a promissory note. Education Resources Inst., Inc. v Hughes, 47 A.D.3d 613, 848 N.Y.S.2d 538, 2008 N.Y. App. Div. LEXIS 114 (N.Y. App. Div. 2d Dep't 2008).

Admission of two exhibits was error in an accounting action because the documents constituted hearsay, inasmuch as they were admitted for the truth of their contents, but the proper foundation for their admission as business records under N.Y. C.P.L.R. 4518(a) was not established and the indicia of reliability a business record was absent. Wang v Shao Ke, 77 A.D.3d 1113, 909 N.Y.S.2d 778, 2010 N.Y. App. Div. LEXIS 7534 (N.Y. App. Div. 3d Dep't 2010), app. denied, 16 N.Y.3d 713, 924 N.Y.S.2d 322, 948 N.E.2d 929, 2011 N.Y. LEXIS 871 (N.Y. 2011).

Training receipt was properly admitted as a business record, pursuant to N.Y. C.P.L.R. 4518(a), made applicable by N.Y. Crim. Proc. Law § 60.10, because a customer representative employed

by the complainant, an electronics store, testified that a training receipt was created every time the complainant's employees apprehended a shoplifter, that the purpose of the receipt was to ascertain and memorialize the property that was stolen, that it was the regular course of the complainant's business to create such receipts, and that the receipts were created within minutes of a shoplifter's apprehension; defendant's assertion that preclusion of the training receipt was warranted on grounds that it was created solely for purposes of litigation was unavailing. People v King, 102 A.D.3d 434, 958 N.Y.S.2d 101, 2013 N.Y. App. Div. LEXIS 37 (N.Y. App. Div. 1st Dep't), app. denied, 20 N.Y.3d 1100, 965 N.Y.S.2d 796, 2013 N.Y. LEXIS 1096 (N.Y. 2013).

Tenant was not entitled to summary judgment because the tenant's affidavit in support of its motion for summary judgment was conclusory and did not establish a cause of action for unfair competition based on trademark or trade name infringement or misappropriation of goodwill, and the tenant did not aver that the exhibits to the affidavit were records made in the regular course of business under N.Y. C.P.L.R. 4518(a). KG2, LLC v Weller, 105 A.D.3d 1414, 966 N.Y.S.2d 298, 2013 N.Y. App. Div. LEXIS 2927 (N.Y. App. Div. 4th Dep't 2013).

Pedestrian did not have to meet the business records exception for the admission of a map prepared by a sidewalk protection committee as the map was not hearsay since it was not offered for its truth in accurately depicting the defect in the sidewalk, but to show that the City had the notice required by New York City, N.Y., Admin. Code § 7-201. Fleisher v City of New York, 120 A.D.3d 1390, 993 N.Y.S.2d 112, 2014 N.Y. App. Div. LEXIS 6250 (N.Y. App. Div. 2d Dep't 2014).

Trial court properly excluded written statements made by employees of a daycare center in connection with the internal investigation of an incident involving an alleged injury to a child because the center did not establish that such statements were made in the regular course of the center's business. Spath v Storybook Child Care, Inc., 137 A.D.3d 1736, 29 N.Y.S.3d 78, 2016 N.Y. App. Div. LEXIS 2225 (N.Y. App. Div. 4th Dep't 2016).

Assignee of a mortgage failed to demonstrate admissibility under the business records exception to the hearsay rule of certain records it sought to use to establish it had physical possession of the mortgage note prior to the commencement of the action because the affiant of the affidavit the assignee relied on failed to attest that he was personally familiar with the assignee's record keeping practices and procedures. Aurora Loan Servs., LLC v Mercius, 138 A.D.3d 650, 29 N.Y.S.3d 462, 2016 N.Y. App. Div. LEXIS 2477 (N.Y. App. Div. 2d Dep't 2016).

Trial court erred in granting an assignee's motion for summary judgment in its mortgage foreclosure action because the assignee failed to establish its standing where, inter alia, an affiant did not attest that she was personally familiar with the assignee's record keeping practices and procedures, and the assignee failed to establish delivery or assignment of the note to the lender's nominee before it executed the assignment. Aurora Loan Servs., LLC v Baritz, 144 A.D.3d 618, 41 N.Y.S.3d 55, 2016 N.Y. App. Div. LEXIS 7039 (N.Y. App. Div. 2d Dep't 2016).

Loan servicer was not entitled to summary judgment on the owners' allegation that the promissory note had been satisfied because the servicer failed to demonstrate the admissibility of the records relied upon by its affiant under the business records exception to the hearsay rule. Zuniga v BAC Home Loans Servicing, L.P., 147 A.D.3d 882, 47 N.Y.S.3d 374, 2017 N.Y. App. Div. LEXIS 1016 (N.Y. App. Div. 2d Dep't 2017).

In a mortgage foreclosure action, a Legal Coordinator's averment, based upon her review of and familiarity with plaintiff's records, that a “loan” was part of a portfolio of purchased assets was hearsay for which she failed to lay a proper foundation under the business records exception to the hearsay rule. 21st Mtge. Corp. v Adames, 153 A.D.3d 474, 60 N.Y.S.3d 198, 2017 N.Y. App. Div. LEXIS 5871 (N.Y. App. Div. 2d Dep't 2017).

In a foreclosure proceeding, the trial court properly considered the loan servicer's affidavit because the information therein was based on business records, and the use of the phrase “on or before” instead of “on” in the servicer's affidavit to identify the date of delivery of the note to

the transferee did not constitute a fatal defect. DLJ Mtge. Capital, Inc. v Sosa, 153 A.D.3d 666, 60 N.Y.S.3d 278, 2017 N.Y. App. Div. LEXIS 6122 (N.Y. App. Div. 2d Dep't 2017).

Motion court erred in denying an owner's motions for summary judgment and to amend his answer to add the affirmative defense of standing because the loan sub-servicer's vice president did not authenticate the servicing agreement, either by identifying the signatures or by laying a business records foundation, and failed to plead that he was familiar with the assignee's record-keeping practices, and the assignee was inconsistent as to whether it physically held the note at the time it commenced the foreclosure action. B & H Fla. Notes LLC v Ashkenazi, 149 A.D.3d 401, 51 N.Y.S.3d 59, 2017 N.Y. App. Div. LEXIS 2532 (N.Y. App. Div. 1st Dep't 2017).

In plaintiff's action under N.Y. Real Prop. Acts. Law § 1501(4) to cancel and discharge a senior mortgage, the court properly granted defendant bank's request to vacate its default as the affidavit of its loan servicer satisfied the admissibility requirements of this section and provided a reasonable excuse for the bank's failure to timely the complaint, and defendant established a potentially meritorious defense to the action with evidence that the statute of limitations to foreclose the senior mortgage had not expired. Stewart Tit. Ins. Co. v Bank of N.Y. Mellon, 154 A.D.3d 656, 61 N.Y.S.3d 634, 2017 N.Y. App. Div. LEXIS 6943 (N.Y. App. Div. 2d Dep't 2017), app. denied, 30 N.Y.3d 909, 94 N.E.3d 484, 71 N.Y.S.3d 2, 2018 N.Y. LEXIS 41 (N.Y. 2018).

Trial court erred in granting an assignee's motion for summary judgment against a borrower and the mortgage signatory and for an order of reference because the assignee failed to demonstrate the admissibility of the records relied upon by the affiant under the business records exception to the hearsay rule where the affiant did not attest that she was personally familiar with the record-keeping practices and procedures of the assignee, and the assignee also failed to submit any evidence establishing delivery or assignment of the note to the assignor prior to its execution of the assignment to the assignee. Bank of N.Y. Mellon v Alli, 156 A.D.3d 597, 66 N.Y.S.3d 291, 2017 N.Y. App. Div. LEXIS 8624 (N.Y. App. Div. 2d Dep't 2017).

In an action to foreclose a mortgage, the trial court erred by granting plaintiff's motion for summary judgment because it lacked standing to bring the action as the note had been

endorsed in blank. The affidavits of bank employees failed to establish physical delivery of the note to plaintiff prior to commencement of the action; nor did they establish the foundational knowledge required to admit such factual details under the business records exception to the hearsay rule. U.S. Bank N.A. v Brody, 156 A.D.3d 839, 67 N.Y.S.3d 647, 2017 N.Y. App. Div. LEXIS 8869 (N.Y. App. Div. 2d Dep't 2017).

Trial court erred in the granting an assignee's motion for summary in its mortgage foreclosure action against a borrower because the assignee failed to demonstrate its standing inasmuch as the loan servicer's employee did not attest that she was personally familiar with the assignee's record-keeping practices and procedures pursuant to the business records exception to the hearsay rule. US Bank N.A. v Ballin, 158 A.D.3d 786, 72 N.Y.S.3d 110, 2018 N.Y. App. Div. LEXIS 1179 (N.Y. App. Div. 2d Dep't 2018).

Trial court erred in granting a lender’s motion for summary judgment on the complaint insofar as asserted against a borrower and for an order of reference because the lender failed to submit an affidavit of service or proof of mailing by the post office evincing that it properly served the borrower where the lender’s submission of an affidavit of the employee of its servicer was insufficient to establish that the notices were sent to the borrower in the manner required by § 1304, and while mailing might be proved by documents meeting the requirements of the business records exception to the hearsay rule, the affiant did not aver that he was familiar with the servicer’s mailing practices and procedures. Wells Fargo Bank, N.A. v Moran, 168 A.D.3d 1128, 92 N.Y.S.3d 716, 2019 N.Y. App. Div. LEXIS 592 (N.Y. App. Div. 2d Dep't 2019).

Lender failed to establish that it had standing to commence the instant foreclosure action because assertions by the lender’s employee as to the contents of the records were inadmissible hearsay to the extent that the records she purported to describe were not submitted with her affidavit; thus, the trial court erred by granting the lender’s summary judgment motion. Wells Fargo Bank, N.A. v Springer, 179 A.D.3d 749, 116 N.Y.S.3d 389, 2020 N.Y. App. Div. LEXIS 163 (N.Y. App. Div. 2d Dep't 2020).

Assignee failed to establish that it complied with the condition precedent contained in the mortgage agreement regarding the notice of default because the assignee's submissions did not establish that the notice was sent by first class mail or actually delivered to the notice address, as required by the terms of the agreement, and the affidavit by the assignee's employee failed to lay a proper foundation for the admission of records concerning the assignee's mailing of the notices of default. Wells Fargo Bank, N.A. v McKenzie, 186 A.D.3d 1582, 131 N.Y.S.3d 692, 2020 N.Y. App. Div. LEXIS 5173 (N.Y. App. Div. 2d Dep't 2020).

Trial court erred in confirming a referee's report and in entering a judgment of foreclosure and sale because the affidavit created by a vice president of the loan servicer was insufficient to establish a proper foundation for the admission of a business record where she failed to attest that she was personally familiar with the record-keeping practices and procedures of the servicer, the entity that generated the subject business records. IndyMac Fed. Bank, FSB v Vantassell, 187 A.D.3d 725, 133 N.Y.S.3d 93, 2020 N.Y. App. Div. LEXIS 5622 (N.Y. App. Div. 2d Dep't 2020).

Plaintiff failed to prove that the original note had been lost because, inter alia, an affidavit from a representative of the loan servicer was not in admissible form, as the affiant failed to demonstrate the admissibility of records she relied upon under the business records exception to the hearsay rule, and plaintiff did not demonstrate ownership of the note; thus, plaintiff lacked standing. Wells Fargo Bank, N.A. v Shteynberg, 187 A.D.3d 967, 130 N.Y.S.3d 691, 2020 N.Y. App. Div. LEXIS 5889 (N.Y. App. Div. 2d Dep't 2020).

Trial court erred in granting a lender's motion for summary judgment in its foreclosure action because the lender failed to establish that it complied with the statutory mailing requirements where an employee of its loan servicer did not aver that she had personal knowledge of the purported mailings or that she was familiar with the mailing practices and procedures of the lender, the lender failed to establish proof of mailing through admissible business records as required by statute and the mortgage. JPMorgan Chase Bank, N.A. v Gold, 188 A.D.3d 1019, 136 N.Y.S.3d 380, 2020 N.Y. App. Div. LEXIS 7029 (N.Y. App. Div. 2d Dep't 2020).

In a foreclosure action, defendant’s challenges to certain records were unavailing because the affirmation of plaintiff’s prior counsel relied on his personal knowledge as plaintiff’s prior counsel, as well as a review of the records in his firm’s possession; and he attached exhibits such as the bailee letter that he, as someone familiar with his firm’s record-keeping practices, averred were kept in the regular course of business. Deutsche Bank Natl. Trust Co. v LeTennier, 189 A.D.3d 2022, 139 N.Y.S.3d 673, 2020 N.Y. App. Div. LEXIS 8315 (N.Y. App. Div. 3d Dep't 2020).

In a foreclosure action, given the employee’s position with the servicer, as well as her attestation that she was personally familiar with the servicer’s record-keeping practices and that it incorporated and relied upon the records of prior servicers of defendant’s loan, the challenged documents that were attached to her affidavit qualified as business records excepted from the hearsay rule. Deutsche Bank Natl. Trust Co. v LeTennier, 189 A.D.3d 2022, 139 N.Y.S.3d 673, 2020 N.Y. App. Div. LEXIS 8315 (N.Y. App. Div. 3d Dep't 2020).

Trial court erred in granting a law firm’s motion for summary judgment in a client’s action to recover damages for breach of contract, violation of the Judiciary Law, and breach of fiduciary duty because the firm failed to establish its prima facie entitlement to judgment as a matter of law dismissing the remaining causes of action where the firm failed to submit the insurer correspondence and the Matter Ledger Card (concerning the client’s payment history) in admissible form. Anghel v Ruskin Moscou Faltischek, P.C., 190 A.D.3d 906, 141 N.Y.S.3d 92, 2021 N.Y. App. Div. LEXIS 454 (N.Y. App. Div. 2d Dep't 2021).

Plaintiff failed to demonstrate that a copy of the joint development agreement was admissible as a business record because plaintiff could not establish that the copy was made as a memorandum or record of the transaction or occurrence at issue since he was precluded from testifying as to the same by the application of the Dead Man’s Statute. Stathis v Estate of Estate of Donald Karas, 193 A.D.3d 897, 147 N.Y.S.3d 83, 2021 N.Y. App. Div. LEXIS 2424 (N.Y. App. Div. 2d Dep't 2021), app. denied, 38 N.Y.3d 903, 185 N.E.3d 1009, 165 N.Y.S.3d 488, 2022 N.Y. LEXIS 554 (N.Y. 2022).

County court erred in refusing to allow defendant to question the author of the preliminary investigation report describing defendant as highly intoxicated and then declining to admit the document into evidence on hearsay grounds because its author was not present on the night of the incident. Defendant should have been afforded an opportunity to establish the proper foundation to qualify the email as a business record within the meaning of CPLR 4518. People v Mawhiney, 220 A.D.3d 1055, 198 N.Y.S.3d 783, 2023 N.Y. App. Div. LEXIS 5261 (N.Y. App. Div. 3d Dep't 2023).

In a breach of contract action against the State of New York arising out of a road reconstruction project, the court of claims properly refused to admit into evidence a letter purportedly indicating that the contractor failed to submit a certification pursuant to the contract because the State failed to lay a proper foundation for its admission as a business record. Laquila Group, Inc. v State of New York, 222 A.D.3d 738, 202 N.Y.S.3d 223, 2023 N.Y. App. Div. LEXIS 6454 (N.Y. App. Div. 2d Dep't 2023).

Loan servicer failed to establish borrower’s default; although a transaction history document bore the servicer’s logo dating back to 2007, there was no explanation of the source of information entered prior to 2020, the date of the servicer’s limited power of attorney and document was not admissible under business records exception, CPLR 4518[a]. Bank of N.Y. Mellon v Demasco, 226 A.D.3d 855, 209 N.Y.S.3d 495, 2024 N.Y. App. Div. LEXIS 2100 (N.Y. App. Div. 2d Dep't 2024).

Documents purporting to be “field reports” prepared by a sales and service representative of an automobile manufacturer, whose duties were to acquaint himself with the maintenance practices of purchasers of its automobiles, to give advice as to proper maintenance, and to investigate complaints, and which reports, based on the representative’s own observations and criticisms expressed to him by the purchaser’s employees, showed that any fault in performance was not due to the automobiles but to poor management and improper maintenance procedures, were held inadmissible in a condemnation proceeding as competent evidence of poor management on the part of the condemnee in order to minimize that condemnee’s business had a going-

concern value warranting compensation. In re Fifth Ave. Coach Lines, Inc., 42 Misc. 2d 319, 247 N.Y.S.2d 933, 1964 N.Y. Misc. LEXIS 2056 (N.Y. Sup. Ct. 1964).

Admission of calibration records of a lidar speed detecting device in defendant's trial for speeding in a school zone in violation of N.Y. Veh. & Traf. Law § 1180(c)(1) did not violate her rights under the confrontation clause of U.S. Const. amend. VI; the calibration records were admissible as business records under N.Y. C.P.L.R. 4518(c), and not as testimonial documents, since the device was calibrated as part of a routine examination nearly a month before defendant was charged and was not calibrated solely in order to gather evidence for her prosecution. People v Deep, 821 N.Y.S.2d 381, 12 Misc. 3d 1137, 2006 N.Y. Misc. LEXIS 1600 (N.Y. City Ct. 2006).

To the extent that an insurer admitted, pursuant to N.Y. C.P.L.R. 3123, the genuineness of a claim denial form, it did not concede the admissibility of the claim form as a business record, pursuant to N.Y. C.P.L.R. 4518; accordingly, the provider did not establish a prima facie case and the insurer was entitled to judgment dismissing the complaint. Bajaj v General Assur., 852 N.Y.S.2d 576, 18 Misc. 3d 25, 2007 N.Y. Misc. LEXIS 7711 (N.Y. App. Term 2007).

In a personal injury action, the trial court properly precluded the admission in evidence of two "as built" electrical drawings prepared by a contractor; a party seeking to admit documents in evidence as business records had to satisfy the three foundational requirements of N.Y. C.P.L.R. 4518(a), and defendants failed to testify that a university routinely relied upon the business records of the contractor who produced the as-built drawings in the performance of the university's own business. Hess v Murnane Bldg. Contrs., Inc., 306 A.D.2d 824, 762 N.Y.S.2d 212, 2003 N.Y. App. Div. LEXIS 6860 (N.Y. App. Div. 4th Dep't 2003).

In a proceeding pursuant to N.Y. Soc. Serv. Law § 384-b to terminate an incarcerated father's parental rights for permanent neglect, the child's case file was properly admitted into evidence under N.Y. C.P.L.R. 4518(a) as a business record. Matter of Jonathan R. v Michael R., 30 A.D.3d 426, 817 N.Y.S.2d 335, 2006 N.Y. App. Div. LEXIS 7350 (N.Y. App. Div. 2d Dep't), app. denied, 7 N.Y.3d 711, 823 N.Y.S.2d 770, 857 N.E.2d 65, 2006 N.Y. LEXIS 2665 (N.Y. 2006).

Even if a police officer's breath alcohol analysis record was deemed to be hearsay in the first instance due to a defective certification under N.Y. C.P.L.R. 4518(c), it was revived and admitted during cross-examination by the testimony of the officer during the hearing as per N.Y. C.P.L.R. 4518(a). People v Patanian, 857 N.Y.S.2d 482, 20 Misc. 3d 298, 2008 N.Y. Misc. LEXIS 2668 (N.Y. J. Ct. 2008).

Aerial photo was properly admitted under the N.Y. C.P.L.R. 4518(a) business records hearsay exception in an adverse possession case brought by owners against a town because the town presented testimony that the photo was made in the regular course of the county's business and that the recording was contemporaneous with the report; additionally, there was sufficient indicia of the photo's reliability. An expert aerial photograph analyst testified that the enlargements of the photo showed that only a few of the improvements to the property at issue claimed by the owners had been made by the time the photo was taken, and thus sufficiently supported the trial court's finding that the owners had not made the improvements needed for their adverse possession claim prior to the statutory 10-year period. Corsi v Town of Bedford, 58 A.D.3d 225, 868 N.Y.S.2d 258, 2008 N.Y. App. Div. LEXIS 9010 (N.Y. App. Div. 2d Dep't 2008), app. denied, 12 N.Y.3d 714, 883 N.Y.S.2d 797, 911 N.E.2d 860, 2009 N.Y. LEXIS 2486 (N.Y. 2009).

Because a letter from a real estate company's president was not a prior statement of the witness and because no foundation was laid for its admission as a business record, the letter should not have been admitted under N.Y. C.P.L.R. 4514 or 4518(a). Miller v Moore, 68 A.D.3d 1325, 890 N.Y.S.2d 712, 2009 N.Y. App. Div. LEXIS 8963 (N.Y. App. Div. 3d Dep't 2009).

Court enjoined further progress on mortgage foreclosure until lender proved compliance with requirements under N.Y. Real Prop. Acts. Law § 1304, because the lender's proof failed to establish regularity in mailing practice or a specific mailing sufficient to shift the burden of proof; there was no certification regarding the accuracy of the record or any claim that it would otherwise fall within the ambit of N.Y. C.P.L.R. 4518(c). Kearney v Kearney, 979 N.Y.S.2d 226, 42 Misc. 3d 360, 2013 N.Y. Misc. LEXIS 5183 (N.Y. Sup. Ct. 2013).

In a personal injury action arising from an ambulance collision with a car, the data generated from the ambulance's onboard computer system was inadmissible hearsay, as defendants, the ambulance driver and his ambulance service employer, did not lay a proper foundation under the business record hearsay exception for admission of the data to establish that the ambulance's sirens and lights were activated prior to the accident; defendants' witness did not claim any expertise, training, experience, or knowledge on how the onboard computer system worked or how the data was stored, recorded, or retrieved, nor did he attest that he was personally familiar with the record-keeping practices and procedures relating to the onboard computer system. Sardar v Park Ambulance Serv. Inc., 56 Misc. 3d 756, 53 N.Y.S.3d 515, 2017 N.Y. Misc. LEXIS 2007 (N.Y. Sup. Ct. 2017).

Affidavit of one of the LLC's managing members satisfied the requirements of CPLR 4518 for admitting business records regarding transactions in default as evidence because he was the keeper of the records, knew the LLC's business practices and procedures, and stated that the records were made in the regular course of business. Specialty Capital, LLC v Gregory T. Harvey DDS, Inc., 2024 N.Y. Misc. LEXIS 25099 (N.Y. Sup. Ct. 2024).

In a patent infringement case, although a witness lacked personal knowledge regarding chain of title documents that were offered for the purpose of establishing ownership to a patent, the documents were admissible because N.Y. C.P.L.R. 4518 provided that a lack of personal knowledge did not affect a record's admissibility and the documents were authenticated under Fed. R. Evid. 901(b)(8) given that the documents were more than 20 years old, the documents were produced in response to a subpoena served on a company for the purpose of establishing that the company had the rights to sell the patent, the agreements were signed and attested to by the parties to the agreements, and the documents were found in a place where they would likely be kept. LG Display Co., Ltd. v Au Optronics Corp., 265 F.R.D. 189, 2010 U.S. Dist. LEXIS 12903 (D. Del. 2010).

II. Government Records

18. Generally

Summary of engineering charges prepared from a record of the days, hours, and personnel used at a job construction site which the state requested its engineer to make and from other records of the state were records made in the regular course of business of the state and were properly admitted into evidence. Erecto Corp. v State, 29 A.D.2d 728, 286 N.Y.S.2d 562, 1968 N.Y. App. Div. LEXIS 4821 (N.Y. App. Div. 3d Dep't 1968).

In wrongful death action brought by widow of deceased psychiatric patient against hospital, trial court did not err in excluding social worker's written report which was not made until almost a year after conversation reported, in view of fact that such report was not made within reasonable time after event recorded. Lichtenstein v Montefiore Hospital & Medical Center, 56 A.D.2d 281, 392 N.Y.S.2d 18, 1977 N.Y. App. Div. LEXIS 10430 (N.Y. App. Div. 1st Dep't 1977).

In action for property damage sustained by flooding from sewer backup, plaintiff was not prejudiced by redaction of certain statements from letter written by deceased employee of defendant city's sewer department, even though letter was business record, since statements were conclusory and would not have been admissible even had employee testified at trial. Merritt v Long Beach, 139 A.D.2d 574, 527 N.Y.S.2d 74, 1988 N.Y. App. Div. LEXIS 3905 (N.Y. App. Div. 2d Dep't 1988).

In action against owner of building under construction for injuries sustained when pedestrian was walking past building at night, was compelled to step into street because sidewalk was broken up, and was struck by barricade when passing automobile collided with it, court erred in refusing to admit copy of owner's construction permit and accompanying application despite having been certified as such by custodian of records since (1) CLS CPLR § 4540(a) excepts official records from mandates of best evidence rule of CLS CPLR § 4518(c), and (2) pedestrian had subpoenaed original from city, which had not produced it by time of trial. Chanler v Manocherian, 151 A.D.2d 432, 543 N.Y.S.2d 671, 1989 N.Y. App. Div. LEXIS 8884 (N.Y. App. Div. 1st Dep't 1989).

After a hearing to determine the town's liability for damage to a fire truck during a mutual aid call to the town, it was determined that the fire commissioner was not capable of providing a proper foundation to admit the repair invoice as its maker and the fire department did not show that it routinely relied upon the business records of another entity in performance of its business. W. Valley Fire Dist. No. 1 v Vill. of Springville, 294 A.D.2d 949, 743 N.Y.S.2d 215, 2002 N.Y. App. Div. LEXIS 4551 (N.Y. App. Div. 4th Dep't 2002).

State was entitled to a default judgment in its N.Y. Nav. Law art. 12 suit against a corporation because the State submitted affidavits which alleged that the corporation delivered petroleum products to the spill site during the relevant time, that the soil at the spill site was contaminated with petroleum caused by overfilling of storage tanks during gasoline deliveries, and that a tank closure report was an admissible business record pursuant to N.Y. C.P.L.R. 4518(a). State of New York v Williams, 73 A.D.3d 1401, 901 N.Y.S.2d 751, 2010 N.Y. App. Div. LEXIS 4393 (N.Y. App. Div. 3d Dep't), app. denied, 15 N.Y.3d 709, 909 N.Y.S.2d 24, 935 N.E.2d 816, 2010 N.Y. LEXIS 2657 (N.Y. 2010).

Reports of the New York Department of Environmental Conservation's (DEC) contractors were properly admitted as business records under N.Y. C.P.L.R. 4518(a) as: (1) they were incorporated into the DEC's records and were routinely relied on by the DEC to perform its tasks of remediating oil spills and investigating the source of the oil under N.Y. Nav. Law § 176; (2) the records were generated by the contractors at DEC's direction and DEC was their primary custodian; (3) DEC's representative confirmed that the laboratory test report samples were taken and sent to a state-certified lab at his direction, that he chose the type of test to be performed on the samples and that he was familiar with the test; and (4) the DEC representative testified that the reports were made for DEC in the regular course of business of the contractors, it was their regular course of business to create such reports, and they were prepared at or near the time that the samples were taken. State of New York v 158th St. & Riverside Dr. Hous. Co., Inc., 100 A.D.3d 1293, 956 N.Y.S.2d 196, 2012 N.Y. App. Div. LEXIS 8146 (N.Y. App. Div. 3d

Dep't 2012), app. denied, 20 N.Y.3d 858, 960 N.Y.S.2d 350, 984 N.E.2d 325, 2013 N.Y. LEXIS 148 (N.Y. 2013).

A certified letter from state traffic commission sought to be introduced in evidence by defendant in a traffic violation case under subd (a) of this section is clearly admissible as coming within an exception to the hearsay rule that it was a business record made in the regular course of business and that it was the regular course of such business to make said record. People v Hollingsworth, 46 Misc. 2d 1017, 261 N.Y.S.2d 470, 1965 N.Y. Misc. LEXIS 1841 (N.Y. County Ct. 1965).

Evidence which consisted of form of accounts and record section of court's office of probation and which indicated that deceased husband was $50 in arrears to wife and that he was liable to wife for $30 a month from 1970 to 1973 and which indicated that no money had been paid was admissible, in wife's action for support, as a business record and the evidence was not precluded by the dead-man's statute. D. v D., 79 Misc. 2d 6, 358 N.Y.S.2d 920, 1974 N.Y. Misc. LEXIS 1574 (N.Y. Fam. Ct. 1974).

In action for false arrest and malicious prosecution based on alleged conduct of police in deliberately withholding material exculpating plaintiff from assistant district attorney, transcript of unsworn statements made in open court by assistant district attorney disclosing certain exculpatory material would be admitted as business record under CLS CPLR § 4518, since prosecutor's duty to disclose exculpatory material in his control assured trustworthiness of statements. Kearney v New York, 144 Misc. 2d 201, 543 N.Y.S.2d 879, 1989 N.Y. Misc. LEXIS 434 (N.Y. Sup. Ct. 1989).

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).

Because a certified Workers' Compensation Board decision, which was attached to and made a part of the information filed against defendant, was admissible as a business record under N.Y. C.P.L.R. 2307, 4518(c), the information complied with N.Y. Crim. Proc. Law § 100.40; accordingly, defendant's motion to dismiss the information as insufficient was denied. People v Previl, 864 N.Y.S.2d 906, 21 Misc. 3d 914, 240 N.Y.L.J. 81, 2008 N.Y. Misc. LEXIS 6029 (N.Y. City Crim. Ct. 2008).

Although records from the New York Human Relations Administration (HRA) might be business records that were excepted from the hearsay rule and provided corroboration of the confession used to charge defendant under N.Y. Penal Law § 178.10, testimony about the records from the HRA fraud investigator who claimed to the records' custodian, without actual production of the records, was insufficient to support a conversion of the criminal complaint to an information under N.Y. Crim. Proc. Law § 100.15. People v Ross, 814 N.Y.S.2d 861, 12 Misc. 3d 755, 235 N.Y.L.J. 106, 2006 N.Y. Misc. LEXIS 1017 (N.Y. City Crim. Ct. 2006).

Aerial photo was properly admitted under the N.Y. C.P.L.R. 4518(a) business records hearsay exception in an adverse possession case brought by owners against a town because the town presented testimony that the photo was made in the regular course of the county's business and that the recording was contemporaneous with the report; additionally, there was sufficient indicia of the photo's reliability. An expert aerial photograph analyst testified that the enlargements of the photo showed that only a few of the improvements to the property at issue claimed by the owners had been made by the time the photo was taken, and thus sufficiently supported the trial court's finding that the owners had not made the improvements needed for their adverse possession claim prior to the statutory 10-year period. Corsi v Town of Bedford, 58 A.D.3d 225, 868 N.Y.S.2d 258, 2008 N.Y. App. Div. LEXIS 9010 (N.Y. App. Div. 2d Dep't 2008), app. denied, 12 N.Y.3d 714, 883 N.Y.S.2d 797, 911 N.E.2d 860, 2009 N.Y. LEXIS 2486 (N.Y. 2009).

Appellant’s records from the Division of Criminal Justice Services and the Board of Examiners of Sex Offenders were properly admitted as certified business records in an N.Y. Mental Hyg. Law art. 10 proceeding. Matter of State of New York v Andrew O., 68 A.D.3d 1161, 890 N.Y.S.2d 667, 2009 N.Y. App. Div. LEXIS 8720 (N.Y. App. Div. 3d Dep't 2009), rev'd, 16 N.Y.3d 841, 922 N.Y.S.2d 255, 947 N.E.2d 146, 2011 N.Y. LEXIS 557 (N.Y. 2011).

Trespass notices issued to defendant by the city housing authority qualified as business records under the exception to the hearsay rule, and as the notices alleged defendant was in violation of the notices at the times and places specified in the criminal complaints, no further allegations were required to establish his knowledge that he was not welcome in the premises; therefore, attachment of the notices to the complaints was sufficient to convert the complaints to misdemeanor informations. People v Abraham, 51 Misc. 3d 755, 24 N.Y.S.3d 894, 2016 N.Y. Misc. LEXIS 388 (N.Y. City Crim. Ct. 2016).

19. Birth and death records

In a filiation proceeding, although the putative father was not required to testify under Family Ct Act § 531, his failure to testify allowed the trier of fact to draw the strongest inference against him that the opposing evidence would permit. Therefore, Family Court orders adjudging respondent to be the child’s father and directing him to pay support would be affirmed where Family Court had properly considered only entries in the hospital record of the mother’s confinement at delivery as expert testimony corroborating her testimony that the child was born prematurely, placing conception at a time when petitioner testified that she and respondent had engaged in sexual intercourse. Commissioner of Social Services v Philip De G., 59 N.Y.2d 137, 463 N.Y.S.2d 761, 450 N.E.2d 681, 1983 N.Y. LEXIS 3110 (N.Y. 1983).

Had birth certificate and application as well as death certificate been offered in evidence in probate proceeding, under the business records rule, they would have been admissible as such together with the collateral facts stated and not solely for proof of birth or death. Will of T., 86 Misc. 2d 452, 382 N.Y.S.2d 916, 1976 N.Y. Misc. LEXIS 2467 (N.Y. Sur. Ct. 1976).

20. Court files, records and reports

In an action to recover for a fire loss under a homeowner's insurance policy, wherein the carrier raised plaintiff's alleged arson as a defense and offered evidence purporting to demonstrate plaintiff's animosity toward his former wife as motivating the arson, the court erroneously admitted in evidence, pursuant to CPLR § 4518, Family Court files that included letters written to the Family Court by plaintiff's former wife and his daughter, neither of whom was called as a witness, accusing plaintiff of assaults on or threats to kill the mother and describing plaintiff an "animal," since the files were inadmissible hearsay offered for the purpose of establishing plaintiff's bad character; similarly a state police investigator's testimony that various officers had investigated numerous complaints by plaintiff's former wife accusing him of assault, harassment and disorderly conduct, also constituted impermissible hearsay evidence of character. Liberto v Worcester Mut. Ins. Co., 87 A.D.2d 477, 452 N.Y.S.2d 74, 1982 N.Y. App. Div. LEXIS 16574 (N.Y. App. Div. 2d Dep't 1982), app. dismissed, 57 N.Y.2d 955, 1982 N.Y. LEXIS 4552 (N.Y. 1982), app. dismissed, 58 N.Y.2d 824 (N.Y. 1983), dismissed without op., 58 N.Y.2d 825, 1983 N.Y. LEXIS 3908 (N.Y. 1983).

Stenographic notes taken by official court reporter, which were annexed accusatory instrument, could be considered by court when determining facial sufficiency of accusatory instrument, even though they were unsubscribed and unverified; transcribed notes taken by stenographer in regular course of her official duties and certified as true and accurate record of proceedings falls within exceptions to hearsay rule for business records and public documents. People v Henry, 167 Misc. 2d 1027, 641 N.Y.S.2d 1003, 1996 N.Y. Misc. LEXIS 124 (N.Y. Dist. Ct. 1996).

On hearing to determine whether defendant's driver's license would be suspended pending prosecution pursuant to CLS Veh & Tr § 1193(2)(e)(1), where Justice Court files contained bench minutes, accusatory instruments, and "all of the other usual documents" concerning defendant's prior conviction under CLS Veh & Tr § 1192, court would take judicial notice of such matters, making it unnecessary to address any issues concerning CLS CPLR § 4518(c) relative

to sufficiency of documents. People v Giacopelli, 171 Misc. 2d 844, 655 N.Y.S.2d 835, 1997 N.Y. Misc. LEXIS 82 (N.Y. J. Ct. 1997).

In a proceeding regarding defendant, pursuant to Mental Hygiene Law § 10.01 et seq., to determine whether he had a mental abnormality after being convicted of attempted rape of a child, the trial court determined that certain presentence and parole records regarding defendant's 1980 and 1992 convictions were properly relied upon by an expert with regard to his opinion as to defendant's condition, but documents relied upon to establish the facts of a 1961 conviction, for example, that defendant suffered from pedophilia, were not, since those records were made some six years or thirty years after the events surrounding the 1961 convictions. Matter of State of New York v J.A., 868 N.Y.S.2d 841, 21 Misc. 3d 806, 240 N.Y.L.J. 76, 2008 N.Y. Misc. LEXIS 5791 (N.Y. Sup. Ct. 2008).

Defendant's rap sheet constituted both a public record and a business record, such that it was admissible, and the accusatory instrument was an information, based on the detective's attestation that defendant failed to register his gun as required and the rap sheet information. People v Woods, 52 Misc. 3d 618, 31 N.Y.S.3d 830, 2016 N.Y. Misc. LEXIS 1869 (N.Y. City Crim. Ct. 2016).

Trial court admitted into evidence examination under oath transcripts in actions by health care providers to recover assigned first-party no-fault benefits, documenting that the respective providers never gave any testimony whatsoever as each failed to appear, because the transcripts met the requirements of the business exception to the hearsay rule. Charles Deng Acupuncture, P.C. v Titan Ins. Co., 53 Misc. 3d 216, 35 N.Y.S.3d 875, 2016 N.Y. Misc. LEXIS 2407 (N.Y. Civ. Ct. 2016), rev'd, 74 Misc. 3d 137(A), 165 N.Y.S.3d 660, 2022 N.Y. Misc. LEXIS 1411 (N.Y. App. Term 2022).

21. Department of Corrections records

Court of Claims properly allowed state to introduce in evidence staff planning grid as business record where correction officer testified that grid was document prepared in regular course of

business at Department of Correctional Services (DCS), that it was prepared at or about time of tours of duty which were recorded on document, that grid was maintained in regular course of business at DCS, and that he was familiar with document in regular course of business because it was necessary for him and other officers to “broach the chart sergeant who has that document in front of him and inform him of our job number” for day in question. But, Court of Claims properly excluded from evidence entries from unusual incident log book maintained at correctional facility which listed information as to assaults that occurred between inmates in yard for 3-year period preceding instant assault, even if log book was admissible as business record under CLS CPLR § 4518(a), where there was nothing else to show how assaults between other inmates were similar to assault on claimant, in what manner prior assaults would have made assault against claimant foreseeable, or in what way state would have been on notice that metal rod or shiv would escape its detection and would be used on other inmates in yard. Bostic v State, 232 A.D.2d 837, 649 N.Y.S.2d 200, 1996 N.Y. App. Div. LEXIS 10506 (N.Y. App. Div. 3d Dep't 1996), app. denied, 89 N.Y.2d 807, 655 N.Y.S.2d 887, 678 N.E.2d 500, 1997 N.Y. LEXIS 111 (N.Y. 1997).

22. —Parole reports

At a parole revocation hearing based upon relator’s failure to report to his parole officer for a period of some five months, the parole violation report was admissible as a business record although the report was not prepared until some five months after relator’s first failure to appear; under CPLR § 4518 a document may be admitted as a business record if it is established that “it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter”; since, under the terms of his parole, relator was to report to his parole officer every two weeks and the report alleged that relator had failed to report at every required time, there was a continuing violation of the terms of the parole up to the time that the report was prepared, and thus there was substantial evidence in the record to support a conclusion that the report was made within a reasonable time of the occurrence of the violation.

People ex rel. McGee v Walters, 62 N.Y.2d 317, 476 N.Y.S.2d 803, 465 N.E.2d 342, 1984 N.Y. LEXIS 4319 (N.Y. 1984).

The charge that petitioner absconded from parole supervision was not supported by sufficient evidence to sustain revocation of his parole, where the only evidence submitted in support of the charge was a report on violation of parole prepared by a parole officer who was no longer employed by the New York State Division of Parole at the time of the hearing and who was not called as a witness, and where the report, which was prepared some months after the alleged violation occurred, could not be characterized as a business record. People ex rel. McGee v Walters, 96 A.D.2d 605, 465 N.Y.S.2d 300, 1983 N.Y. App. Div. LEXIS 19140 (N.Y. App. Div. 2d Dep't 1983), aff'd, 62 N.Y.2d 317, 476 N.Y.S.2d 803, 465 N.E.2d 342, 1984 N.Y. LEXIS 4319 (N.Y. 1984).

23. —Prison records

Report prepared by Medical Review Commission of State Commission of Corrections pursuant to Correction Law § 47 concerning death by suicide of plaintiff's intestate while in custody is admissible into evidence in plaintiff's suit for wrongful death under business records exception pursuant to CPLR 4518. Kozlowski v Amsterdam, 111 A.D.2d 476, 488 N.Y.S.2d 862, 1985 N.Y. App. Div. LEXIS 51557 (N.Y. App. Div. 3d Dep't 1985).

In prison inmate's claim against state for damages based on alleged sodomy and assault by fellow inmates, although internal report prepared by 2 correction officers pertaining to alleged assault was admissible for purposes other than proving truth of statements made therein, it was inadmissible under business document exception to hearsay rule where source of information therein was inmate who was under no duty to perceive or report event. Zi Guang v State, 263 A.D.2d 745, 695 N.Y.S.2d 142, 1999 N.Y. App. Div. LEXIS 8033 (N.Y. App. Div. 3d Dep't 1999).

24. Department of Labor records

Unlabelled accusatory instrument wherein defendant was charged with violation of Labor Law did not satisfy requirements of an information, since sources of deponent's information and grounds for his belief were the official records of the state Department of Labor and deponent's statement as to his knowledge of contents of record would constitute double hearsay not admissible and thus insufficient to form basis of an information. People v Conoscenti, 83 Misc. 2d 842, 373 N.Y.S.2d 443, 1975 N.Y. Misc. LEXIS 2996 (N.Y. Dist. Ct. 1975).

25. Department of Motor Vehicles (DMV) records

Introduction in evidence of Department of Motor Vehicles abstract of defendant's driving record without proper certification under CLS CPLR § 4518(c), if error, was harmless in prosecution for first degree aggravated unlicensed operation of motor vehicle where police officer's testimony firmly showed defendant's awareness of revoked status of his license at time of traffic stop, and defendant admitted that his license had been revoked and that he had failed to procure reissuance thereof. People v Morgan, 219 A.D.2d 759, 631 N.Y.S.2d 449, 1995 N.Y. App. Div. LEXIS 9261 (N.Y. App. Div. 3d Dep't), app. denied, 87 N.Y.2d 849, 638 N.Y.S.2d 607, 661 N.E.2d 1389, 1995 N.Y. LEXIS 5203 (N.Y. 1995).

Introduction into evidence of police department property vouchers describing seized vehicles and their vehicle identification numbers, without preparer testifying at trial, did not violate his constitutional right of confrontation where records were properly introduced under CLS CPLR § 4518, particularly so since such business records contained "objective factual material compiled under circumstances indicating it to be inherently reliable." People v Badia, 232 A.D.2d 241, 649 N.Y.S.2d 2, 1996 N.Y. App. Div. LEXIS 10103 (N.Y. App. Div. 1st Dep't 1996), app. denied, 89 N.Y.2d 1088, 660 N.Y.S.2d 381, 682 N.E.2d 982, 1997 N.Y. LEXIS 1817 (N.Y. 1997).

Police report was admissible as business record where driver of offending vehicle was under duty to provide responding officer with certificate of registration under CLS Veh & Tr § 401(4), and report indicated that any information as to ownership of offending vehicle came from that

document. Lopez v Ford Motor Credit Co., 238 A.D.2d 211, 656 N.Y.S.2d 257, 1997 N.Y. App. Div. LEXIS 3891 (N.Y. App. Div. 1st Dep't 1997).

Defendant's Sixth Amendment right to confrontation was violated by the receipt in evidence of an affidavit of regularity/proof of mailing sworn to by an employee of the New York State Department of Motor Vehicles, and it was not established at trial that the employee was unavailable to testify, nor was it established that defendant previously had the opportunity to cross-examine her, and the affidavit did not qualify as a business record because: (1) it did not meet the foundation requirements of N.Y. C.P.L.R. 4518(a) made applicable to criminal proceedings by N.Y. Crim. Proc. Law § 60.10; (2) it did not reflect that it was made as part of a routine, regularly conducted business activity, nor did it reflect that it was made in the regular course of business of the Department of Motor Vehicles; and (3) it related to the mailing of an order of revocation of defendant's driving privilege in 1987, but the affidavit was sworn to in 2003, more than 16 years later. People v Pacer, 21 A.D.3d 192, 796 N.Y.S.2d 787, 2005 N.Y. App. Div. LEXIS 6216 (N.Y. App. Div. 4th Dep't 2005), aff'd, 6 N.Y.3d 504, 814 N.Y.S.2d 575, 847 N.E.2d 1149, 2006 N.Y. LEXIS 571 (N.Y. 2006).

In defendant's prosecution for, inter alia, aggravated unlicensed operation of a motor vehicle in the first degree under N.Y. Veh. & Traf. Law § 511(3)(a)(8), defendant's right to confrontation was not violated by admission of the state department motor vehicles' records indicating that defendant's driver's license had been revoked prior to his arrest; certain of those records were properly admitted under the business records exception to the hearsay rule under N.Y. C.P.L.R. 4518(a) and N.Y. Crim. Proc. Law § 60.10. People v Carney, 41 A.D.3d 1239, 838 N.Y.S.2d 316, 2007 N.Y. App. Div. LEXIS 7018 (N.Y. App. Div. 4th Dep't), app. denied, 9 N.Y.3d 873, 842 N.Y.S.2d 785, 874 N.E.2d 752, 2007 N.Y. LEXIS 2723 (N.Y. 2007).

Under CPLR § 4518, the registration of a motor vehicle, in compliance with Vehicle and Traffic Law § 401, may be admitted as prima facie evidence of ownership. The right to custody of license plates by the vehicle owner is readily demonstrable under CPLR § 4518. People v

Meyers, 72 Misc. 2d 1003, 340 N.Y.S.2d 505, 1973 N.Y. Misc. LEXIS 2288 (N.Y. City Crim. Ct. 1973).

An affidavit of regularity in mailing a license revocation notice could not be admitted in the license revocation proceeding in the absence of any testimony from a Department of Motor Vehicles employee that the document was made in the regular course of business. People v D'Agostino, 120 Misc. 2d 437, 465 N.Y.S.2d 834, 1983 N.Y. Misc. LEXIS 3736 (N.Y. County Ct. 1983).

In prosecution for felony aggravated unlicensed operation of motor vehicle, People satisfied requirements of CLS CPLR § 4518 with respect to admission of Department of Motor Vehicle (DMV) documents, including computer-generated printouts of defendant’s driving record, where DMV administrative law judge credibly testified that, based on his training and experience, he was familiar with how DMV made and kept its records, that documents in question were made and kept in regular course of business, that it was DMV’s course of business to make and keep such documents, and that entries in such documents were made contemporaneously with events stated therein. People v Wray, 183 Misc. 2d 444, 704 N.Y.S.2d 787, 2000 N.Y. Misc. LEXIS 35 (N.Y. Sup. Ct. 2000).

In a case where defendant was charged with aggravated unlicensed operation of a motor vehicle in the second degree, the People sought to introduce an affidavit of regularity/proof of mailing executed by the records manager in the New York Department of Motor Vehicles’ Certified Document Center showing that defendant was aware that his licensed had been suspended or revoked, but the criminal court found that the affidavit was not a business record because (1) the document was not executed until 10 after the suspension order was prepared and thus was not made at he time the suspension order was made, or reasonably soon thereafter; (2) the affidavit was not created for more than six months after the date on which the instant case commenced and thus the affidavit was created expressly for use in the current litigation; (3) the contents of the affidavit were plainly testimonial in nature; and (4) the statements in the affidavit describing the process by which suspensions were commenced and

drivers were notified, contrasted sharply with the kind of routine entries of transactions, made in the regular course of business at or near the time when the transactions occurred, that were plainly understood and recognized as business records. Thus, the affidavit was not admissible under the business records exception to the hearsay rule, N.Y. C.P.L.R. § 4518. People v Capellan, 791 N.Y.S.2d 315, 6 Misc. 3d 809, 2004 N.Y. Misc. LEXIS 2656 (N.Y. City Crim. Ct. 2004).

Because defendant failed to clear all of defendant's traffic tickets after being advised to do so at a plea hearing for first-degree aggravated unlicensed operation of a motor vehicle, the trial court properly found that defendant violated a condition of probation and that defendant's Sixth Amendment Confrontation Clause rights were not violated by the admission of a certified copy of defendant's New York State Department of Motor Vehicles driver abstract under the business records exception to the hearsay rule in N.Y. C.P.L.R. 4518(a). People v Maldonado, 44 A.D.3d 793, 843 N.Y.S.2d 415, 2007 N.Y. App. Div. LEXIS 10630 (N.Y. App. Div. 2d Dep't 2007), app. denied, 9 N.Y.3d 1035, 852 N.Y.S.2d 21, 881 N.E.2d 1208, 2008 N.Y. LEXIS 485 (N.Y. 2008).

26. Department of Social Services (DSS) records

In a proceeding to permanently terminate parental rights, it is not error for the trial court to admit into evidence the entire case record of the county Department of Social Services, since a majority of the entries in the record are admissible as business records pursuant to CPLR 4518 (subd [a]) inasmuch as the department was under a legal duty to maintain the record, there is no evidence that the entries were not made within a reasonable time after the events recorded, the department's caseworkers and the foster parents were under a business duty to impart the information recorded to the person making the entry, and business entries containing statements by outsiders may be admissible to prove not the truth of the facts contained therein but that the statements were made; additionally, since the trial court made it clear that objectionable material would not be considered in reaching a determination, there was no error in that court's procedure. In re "RR", 66 A.D.2d 118, 412 N.Y.S.2d 474, 1979 N.Y. App. Div.

LEXIS 9992 (N.Y. App. Div. 3d Dep't), rev'd, 48 N.Y.2d 117, 421 N.Y.S.2d 863, 397 N.E.2d 374, 1979 N.Y. LEXIS 2318 (N.Y. 1979).

In second degree murder trial, social assessment form containing defendant's statement to social worker that he stabbed victim to death was properly admitted in evidence as business record where social worker did not testify since (1) information was germane to defendant's treatment in that everything that psychiatric patient says and does must be accurately recorded for proper diagnosis, and (2) jury was instructed to consider defendant's statement only on issue of mental disease or defect. People v Seiler, 139 A.D.2d 832, 527 N.Y.S.2d 574, 1988 N.Y. App. Div. LEXIS 4561 (N.Y. App. Div. 3d Dep't), app. denied, 72 N.Y.2d 924, 532 N.Y.S.2d 858, 529 N.E.2d 188, 1988 N.Y. LEXIS 3233 (N.Y. 1988).

In prosecution for first degree offering false instrument for filing, inter alia, arising out of defendant's failure to report her employment and earnings to county Department of Social Services (DSS) while continuing to receive public assistance benefits, business records of DSS were properly admitted in evidence since they were not primarily created for testimonial purposes outside ordinary course of business solely for criminal prosecution. People v Montroy, 225 A.D.2d 913, 639 N.Y.S.2d 522, 1996 N.Y. App. Div. LEXIS 2297 (N.Y. App. Div. 3d Dep't 1996).

In proceeding to terminate parental rights for permanent neglect, petitioning agency's case record was admissible under business record exception to hearsay rule. In re Baby Boy S., 251 A.D.2d 165, 674 N.Y.S.2d 338, 1998 N.Y. App. Div. LEXIS 7313 (N.Y. App. Div. 1st Dep't 1998).

In proceeding under CLS Family Ct Act § 514 by county Social Services Department seeking reimbursement for medical assistance expenditures made in connection with out-of-wedlock births of respondents' children, certified computer-generated records kept in ordinary course of department's business were admissible under CLS CPLR § 4518(a) and (g) and were prima facie evidence of department's medical assistance expenditures. Wayne County Dep't of Soc. Servs. v Petty, 273 A.D.2d 943, 709 N.Y.S.2d 791, 2000 N.Y. App. Div. LEXIS 7002 (N.Y. App. Div. 4th Dep't 2000).

Agency's case record was admissible in a termination of parental rights proceeding because (1) a proper foundation was laid by a witness familiar with the agency's record-keeping practices, (2) participants in the chain producing the record acted in the course of regular business conduct, and (3) the record admitted was limited to entries contemporaneous with reported events or within a reasonable time thereafter. Matter of James M. B. (Claudia H.), 155 A.D.3d 1027, 65 N.Y.S.3d 212, 2017 N.Y. App. Div. LEXIS 8410 (N.Y. App. Div. 2d Dep't 2017).

At a fact-finding hearing, involving an order committing the custody and guardianship of a child to petitioner commissioner, the petitioner is allowed to introduce into evidence the child’s case record maintained by the Bureau of Child Welfare as a business record pursuant to CPLR 4518, which requires that entries be made at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter, even though the permanent case record was transcribed from tapes of temporary day books, since files and records which the Department of Social Services are required by law and regulation to maintain are business records and are admissible; the mere fact that a temporary record is made does not deprive a subsequent entry, made as a permanent record, of its character as a record; the entries were made in the day book at most a few days after the event and the later transcription does not rely on memory but on a previously prepared record. In re "Male" G., 97 Misc. 2d 283, 411 N.Y.S.2d 102, 1978 N.Y. Misc. LEXIS 2787 (N.Y. Fam. Ct. 1978).

In contested proceeding under CLS Men Hyg Art 81, portion of Department of Social Services (DSS) record consisting of information derived from visiting nurse service was inadmissible hearsay where visiting nurse service did not provide home health care services pursuant to contract with DSS and thus had no duty to report to DSS; knowledge of entrant was not based on information obtained from declarant under business duty to report information as required by CLS CPLR § 4518(a). In re Janczak, 167 Misc. 2d 766, 634 N.Y.S.2d 1020, 1995 N.Y. Misc. LEXIS 570 (N.Y. Sup. Ct. 1995).

County’s child protective services investigative progress notes could not be admitted into evidence as a business record, because the county furnish the notes to respondent’s counsel in

advance of the hearing so that counsel would have an adequate opportunity to investigate and obtain evidence to rebut the statements in the notes. As the county was under a statutory duty to maintain a comprehensive case record containing reports of any occurrences relevant to the child's welfare pursuant to Social Services Law § 372 and 18 NYCRR 441.7(a), this aspect of the business records test was satisfied; however, none of the caseworkers testified that the progress notes were contemporaneously recorded, a prerequisite for admission of business records. Matter of Andreija E. (Michael E.), 66 Misc. 3d 549, 116 N.Y.S.3d 505, 2019 N.Y. Misc. LEXIS 6410 (N.Y. Fam. Ct. 2019).

27. Federal Deposit Insurance Corporation (FDIC) records

Where a bank failed to establish a proper foundation that an internal Federal Deposit Insurance Company memorandum constituted a business record, or otherwise fell within any other exception to the hearsay rule, that document constituted inadmissible hearsay and was not admissible under N.Y. C.P.L.R. 4518(a). Beal Bank v Melville Magnetic Resonance Imaging, P.C., 294 A.D.2d 320, 741 N.Y.S.2d 882, 2002 N.Y. App. Div. LEXIS 4834 (N.Y. App. Div. 2d Dep't 2002).

28. National Insurance Crime Bureau records

National Insurance Crime Bureau records were admissible in criminal prosecution as business records. People v Veloz, 273 A.D.2d 259, 709 N.Y.S.2d 844, 2000 N.Y. App. Div. LEXIS 6209 (N.Y. App. Div. 2d Dep't), app. denied, 95 N.Y.2d 908, 716 N.Y.S.2d 649, 739 N.E.2d 1154, 2000 N.Y. LEXIS 3730 (N.Y. 2000).

29. NYC Department of Housing Preservation and Development records

Court erroneously precluded admission of certified New York City Department of Housing Preservation and Development records reflecting violations found in landlord's building, even though tenant failed to accompany such records with testimony by department representative to

prove that they were business records kept in regular course of business; CLS CPLR § 4518(c) provides that department records are deemed prima facie evidence of facts contained therein, and no separate authenticating witness is necessary. Barcher v Radovich, 183 A.D.2d 689, 583 N.Y.S.2d 276, 1992 N.Y. App. Div. LEXIS 6532 (N.Y. App. Div. 2d Dep't 1992).

In contempt proceeding involving landlord's failure to remove certain violations of Housing Maintenance Code, agency's inspection reports were admissible under business records exception to hearsay rule since they consisted of essentially technical measurements of room and water temperatures, and such observations constituted objective, factual material compiled under inherently reliable circumstances. Department of Housing Preservation & Dev. v Gottlieb, 136 Misc. 2d 370, 518 N.Y.S.2d 575, 1987 N.Y. Misc. LEXIS 2463 (N.Y. Civ. Ct. 1987).

30. Police reports

Ballistics report annexed to juvenile delinquency petition charging second and third degree weapon possession, and unlawful weapon possession by person under 16 years of age, would not be deemed to qualify as business record exception to hearsay rule, and thus report's failure to contain nonhearsay allegation of weapon's operability could not be overcome, where foundational requirements for applicability of exception were not apparent on face of document. In re Rodney J., 83 N.Y.2d 503, 611 N.Y.S.2d 485, 633 N.E.2d 1089, 1994 N.Y. LEXIS 700 (N.Y. 1994).

Certain "line-sheets" prepared by monitoring agent during electronic telephone surveillance (containing master tape numbers, dates used, sequential numbers of calls, beginning and ending times of conversations, and corresponding counter numbers on recorder) were properly admitted in criminal trial as business records under CLS CPLR § 4518 since line-sheets served important administrative function in daily conduct of police surveillance operation, they were required to be made under court order, their purpose was to maintain inventory of surveillance tapes and to safeguard them against tampering, and they were included in progress reports that

were filed regularly with judge supervising wiretap order. People v Guidice, 83 N.Y.2d 630, 612 N.Y.S.2d 350, 634 N.E.2d 951, 1994 N.Y. LEXIS 1065 (N.Y. 1994).

One-line summary reports of police laboratory indicating presence of cocaine in patrolman, even if admissible as a business record pursuant to CPLR § 4518, lacked substantial probative value, since said report was submitted without any proper foundation to show the nature of the test and the procedures utilized by the laboratory or that the test conducted on urine samples were considered reliable, and where bolstering testimony of police lieutenant as to conversation with lab chemist, indicating that such tests were conclusive, was clearly hearsay and so prejudicial to patrolman as to be inadmissible in disciplinary proceeding. Brown v Murphy, 43 A.D.2d 524, 348 N.Y.S.2d 777, 1973 N.Y. App. Div. LEXIS 3180 (N.Y. App. Div. 1st Dep't 1973).

In a prosecution for operating a motor vehicle while under the influence of alcohol, the trial court properly admitted, through the custodian of records of the arresting police department, certain documents issued by the New York State Division of Criminal Justice Services which certified that the breathalyzer machine that had been used on defendant had been operating accurately when it had been tested by the division both 14 months before and one month after defendant’s arrest, as well as documents which certified that the ampoules and solutions that had been used in the breathalyzer test had been analyzed and verified by the New York State Police laboratory where, though the documents had not been prepared by any representative of the local police department, they were admissible, pursuant to CPLR § 4518, as the records of such police department in that, though the mere filing of papers received from others does not satisfy the element of trustworthiness on which the business record exception to the hearsay rule is based, it was the authenticator’s duty as custodian of the police department’s records to maintain the documents for the local police department, and where, had the test results come directly from the Division of Criminal Justice Services, they would have been admissible under CPLR § 4518(c) without authenticating testimony in that they bore the certification of a department of the State. People v Hayes, 98 A.D.2d 824, 470 N.Y.S.2d 485, 1983 N.Y. App. Div. LEXIS 21152 (N.Y. App. Div. 3d Dep't 1983).

In second degree robbery prosecution in which there was conflicting evidence as to whether defendant removed police detective's badge from detective's back pocket during altercation or merely picked it up from ground (not knowing what it was) as he fled from scene, trial court should not have redacted notation "Comp ID and shield lost or stolen in shuffle" from investigating officer's complaint report since entire report was admissible as business record. People v Gentile, 127 A.D.2d 686, 511 N.Y.S.2d 901, 1987 N.Y. App. Div. LEXIS 43178 (N.Y. App. Div. 2d Dep't 1987).

Statements in police reports did not meet requirements of business records or prior inconsistent statement exceptions to hearsay rule where counsel did not elicit identity of person who made statements. Police reports were not admissible where counsel failed to lay proper foundation under CLS CPLR § 4518 by showing that statements in reports were made by one who was under duty to impart them. People v Dyer, 128 A.D.2d 719, 513 N.Y.S.2d 211, 1987 N.Y. App. Div. LEXIS 44404 (N.Y. App. Div. 2d Dep't 1987).

That portion of police report containing statement allegedly made by defendant in civil assault case was not admissible for truth thereof but solely for limited purpose of proving that statement was made by defendant where report was not prepared by witness to incident, and defendant was not under business duty to relate facts to preparer of report. Donohue v Losito, 141 A.D.2d 691, 529 N.Y.S.2d 813, 1988 N.Y. App. Div. LEXIS 6971 (N.Y. App. Div. 2d Dep't), app. denied, 72 N.Y.2d 810, 534 N.Y.S.2d 938, 531 N.E.2d 658, 1988 N.Y. LEXIS 2940 (N.Y. 1988).

In action against city health and hospitals corporation arising from death of new born infant who was born at home because of lack of response from emergency medical service, business exception to hearsay rule did not permit introduction of police report which stated that husband's first 2 calls were made to hospital and not to 911, since officer who wrote report conceded that he could not identify person who furnished information for report. Canty v New York City Health & Hosp. Corp., 158 A.D.2d 271, 550 N.Y.S.2d 673, 1990 N.Y. App. Div. LEXIS 877 (N.Y. App. Div. 1st Dep't 1990).

Defendant, who was charged with second degree robbery under CLS Penal § 160.10(2)(a) based on his having inflicted injury on apprehending officer's hand for purpose of retaining stolen property, was entitled to new trial where court excluded as hearsay, as part of defendant's case-in-chief, line of duty injury report completed by sergeant and signed by apprehending officer, which indicated that officer broke his knuckles while punching perpetrator, since (1) report was admissible under CLS CPLR § 4518(a) as statement made in ordinary course of police department business under business records exception to hearsay rule, and (2) at very least, it was admissible as prior inconsistent statement, given officer's trial testimony that defendant stomped on his hand. People v Fisher, 201 A.D.2d 193, 615 N.Y.S.2d 374, 1994 N.Y. App. Div. LEXIS 8250 (N.Y. App. Div. 1st Dep't), app. denied, 84 N.Y.2d 935, 621 N.Y.S.2d 532, 645 N.E.2d 1232, 1994 N.Y. LEXIS 4701 (N.Y. 1994), app. dismissed, 84 N.Y.2d 935, 621 N.Y.S.2d 532, 645 N.E.2d 1232, 1994 N.Y. LEXIS 4700 (N.Y. 1994).

"Sprint" report (communication by police officer to "911" dispatcher) was improperly admitted into evidence as business record where police technician was unable to furnish identity of officer who sent communication and did not know source of information that officer had imparted to dispatcher. People v Morrow, 204 A.D.2d 356, 612 N.Y.S.2d 604, 1994 N.Y. App. Div. LEXIS 4535 (N.Y. App. Div. 2d Dep't 1994).

Handwritten notes of police chemist were properly excluded in court's discretion, even if arguably business record, where they were nothing more than evidence cumulative of her testimony. People v Patten, 232 A.D.2d 276, 649 N.Y.S.2d 9, 1996 N.Y. App. Div. LEXIS 10360 (N.Y. App. Div. 1st Dep't 1996), app. denied, 89 N.Y.2d 988, 656 N.Y.S.2d 746, 678 N.E.2d 1362, 1997 N.Y. LEXIS 951 (N.Y. 1997).

Delinquency petition based in part on juvenile's possession of handgun was defective where ballistics report, although attesting to gun's operability, purported only to be copy of original report, included no indication that it was signed by person who tested gun and prepared original report, did not show affiant's personal knowledge of gun's operability, and thus was hearsay evidence, and no proof that ammunition was operable was attached to petition. In re Francisco

C., 238 A.D.2d 224, 657 N.Y.S.2d 16, 1997 N.Y. App. Div. LEXIS 4074 (N.Y. App. Div. 1st Dep't 1997).

In defendant's trial for burglary, the People established a sufficient foundation to permit the receipt of reports of fingerprint comparisons under the business records exception set forth in N.Y. C.P.L.R. 4518(a) since a latent fingerprint expert testified that he was familiar with the business practices of his unit of the police department; his testimony supported the conclusion that all of the fingerprint reports satisfied the contemporaneity requirement of the business records exception. People v Rawlins, 37 A.D.3d 183, 829 N.Y.S.2d 79, 2007 N.Y. App. Div. LEXIS 1377 (N.Y. App. Div. 1st Dep't 2007), aff'd, 10 N.Y.3d 136, 855 N.Y.S.2d 20, 884 N.E.2d 1019, 2008 N.Y. LEXIS 277 (N.Y. 2008).

Admission of fingerprint expert reports under the business record exception of N.Y. C.P.L.R. 4518(a) did not violate defendant's confrontation rights as: (1) the reports were not prepared for the specific purpose of litigation, (2) the reports were prepared in the regular course of an investigation in progress, at a time when defendant had not yet been arrested, and (3) the reports were introduced through the testimony of a live witness subject to confrontation, albeit not the author of those particular reports; any error was harmless because the examiner who testified about the reports made his own comparisons of the same fingerprints tested by the nontestifying examiner and reached the same conclusions, and the nontestifying examiner's reports were merely duplicative of other evidence that was subject to cross-examination. People v Rawlins, 37 A.D.3d 183, 829 N.Y.S.2d 79, 2007 N.Y. App. Div. LEXIS 1377 (N.Y. App. Div. 1st Dep't 2007), aff'd, 10 N.Y.3d 136, 855 N.Y.S.2d 20, 884 N.E.2d 1019, 2008 N.Y. LEXIS 277 (N.Y. 2008).

Trial court erred in refusing to consider a police report in a proceeding brought by the son of a decedent to vacate a decree admitting the decedent's will to probate because, under N.Y. C.P.L.R. 4518(a), the portion of the report containing the officer's notations based on his own observations was not inadmissible hearsay, and established, contrary to the son's claim, that service of the citation was made on the son. Matter of McKanic, 50 A.D.3d 1145, 857 N.Y.S.2d

219, 2008 N.Y. App. Div. LEXIS 3900 (N.Y. App. Div. 2d Dep't), app. dismissed, 50 A.D.3d 1147, 855 N.Y.S.2d 381, 2008 N.Y. App. Div. LEXIS 3887 (N.Y. App. Div. 2d Dep't 2008).

Although defendant laid the proper foundation in his drug sale and possession trial for the admission into evidence of a supplemental police report as a business record or a prior inconsistent statement of one of the two detectives who had the confidential informant under surveillance, the trial court improperly refused to allow its admission into evidence. People v Steward, 54 A.D.3d 880, 864 N.Y.S.2d 488, 2008 N.Y. App. Div. LEXIS 6807 (N.Y. App. Div. 2d Dep't), app. denied, 872 N.Y.S.2d 80, 900 N.E.2d 563, 2008 N.Y. LEXIS 4275 (N.Y. 2008).

Under CPLR Rule 4518 which is made applicable to the Family Court by virtue of § 165 of the Family Court Act, youth cards, commonly referred to as Y. D. 1 cards which are filled out by police officers in some cases instead of arresting a child and starting a proceeding in the Family Court, are business records and may be used in the Family Court to prove the acts which they report without calling the individual officers who apprehended the respondent, made out such cards and signed them. In re Anonymous, 44 Misc. 2d 691, 254 N.Y.S.2d 967, 1964 N.Y. Misc. LEXIS 1355 (N.Y. Fam. Ct. 1964).

While the police report concerning an investigation into decedent’s suicide is admissible in evidence as a record made in the normal course of business (CPLR 4518, subd [a]), the portion of the report containing the detective’s opinion must be stricken since the detective is unavailable for cross-examination. In re Estate of Doran, 96 Misc. 2d 846, 410 N.Y.S.2d 44, 1978 N.Y. Misc. LEXIS 2690 (N.Y. Sur. Ct. 1978).

Although documents relating to a breath test were admissible as business records under N.Y. C.P.L.R. § 4518, they violated the Confrontation Clause because defendant was unable to cross-examine the affiants; nevertheless, there was ample evidence that defendant violated N.Y. Veh. & Traff. Law § 1192(1) by driving while impaired. People v Orpin, 796 N.Y.S.2d 512, 8 Misc. 3d 768, 2005 N.Y. Misc. LEXIS 1069 (N.Y. J. Ct. 2005).

Trial court erred granting defendants' motion for judgment as a matter of law pursuant to N.Y. C.P.L.R. 4401 in a personal injury action; trial court erred in excluding a police report which allegedly contained the co-worker's admission to throwing a lighted cigarette at the injured party based on the injured party's failure to provide a copy to defendants, N.Y. C.P.L.R. 4518, as the injured party did not possess the report, and the error could not be considered harmless pursuant to N.Y. C.P.L.R. 2002. Gatz v Layburn, 9 A.D.3d 348, 780 N.Y.S.2d 157, 2004 N.Y. App. Div. LEXIS 9370 (N.Y. App. Div. 2d Dep't 2004).

Report did not qualify as a business record because it was not properly shown that it was the regular course of business for a sergeant to prepare the report. People v Dean, 58 Misc. 3d 977, 68 N.Y.S.3d 808, 2017 N.Y. Misc. LEXIS 5301 (N.Y. County Ct. 2017).

Police reports of interviews with watchman who was on duty on night of murder at industrial plant were not admissible under business records exception to hearsay rule, absent evidence that watchman had business duty to report unusual incidents to police. Perfetto v Hoke, 898 F. Supp. 105, 1995 U.S. Dist. LEXIS 13172 (E.D.N.Y. 1995).

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).

31. —Accident reports

Although, in a speeding prosecution, a speedometer deviation record is considered hearsay, it is admissible under the business entry exception to the hearsay rule. People v Foster, 27 N.Y.2d 47, 313 N.Y.S.2d 384, 261 N.E.2d 389, 1970 N.Y. LEXIS 1156 (N.Y. 1970).

The transcript of a police blotter entry was admissible to show that a repossession report had been made by the person asserting himself to be defendant’s agent, but the entry was not competent to show that the person had in fact been authorized to repossess plaintiff’s vehicle for the defendant in an action brought by the plaintiff to recover damages for conversion of his car. Hall v Plymouth Discount Corp., 23 A.D.2d 835, 259 N.Y.S.2d 600, 1965 N.Y. App. Div. LEXIS 4155 (N.Y. App. Div. 1st Dep't 1965).

In a personal injury action arising from a two-vehicle accident, the trial court committed reversible error by admitting a police report concerning the accident into evidence as a business record under CPLR § 4518, which report contained statements by defendant concerning her opinion that plaintiff had caused the accident by driving his motorcycle too fast, especially given that the trial court compounded its error by charging the jury that, if they found that plaintiff had exceeded the posted speed limit, a conclusion not supported by any other direct or circumstantial evidence, they could consider the violation some evidence of negligence on his part; additionally, while the errors otherwise might arguably have affected only the two drivers, they also impacted on plaintiff’s strict liability action against the motorcycle manufacturer, in which interrogatories were posed to the jury indicating that, if the jury believed plaintiff was traveling above the speed limit, they might conclude that he could not have avoided the accident notwithstanding the existence of a defect in the motorcycle. Auer v Bienstock, 104 A.D.2d 350, 478 N.Y.S.2d 681, 1984 N.Y. App. Div. LEXIS 19820 (N.Y. App. Div. 2d Dep't 1984).

An accident report prepared and filed by a member of the sheriff’s department, who came upon the scene of an accident some 30 minutes after its occurrence, was properly found to be inadmissible since police reports would be admissible as business records only if the reporting officer had witnessed the accident or if the person who relayed the information to the officer was

under a business duty to do so. Turner v Spaide, 108 A.D.2d 1025, 485 N.Y.S.2d 593, 1985 N.Y. App. Div. LEXIS 43349 (N.Y. App. Div. 3d Dep't), app. denied, 66 N.Y.2d 601, 496 N.Y.S.2d 1025, 490 N.E.2d 553, 1985 N.Y. LEXIS 17214 (N.Y. 1985).

In action for personal injury and wrongful death of pedestrian, simplified traffic information and arresting officer's supporting deposition were not admissible to establish driver's blood alcohol content at time of accident in absence of proper foundation testimony or certificate showing accuracy of test procedures as required by CLS CPLR § 4518. Sassone v Corhouse, 129 A.D.2d 924, 514 N.Y.S.2d 565, 1987 N.Y. App. Div. LEXIS 45589 (N.Y. App. Div. 3d Dep't 1987).

Judgment in favor of defendant in wrongful death action arising out of motor vehicle accident would be reversed and new trial would be ordered due to improper admission of police report since report did not fall into business records exception of hearsay rule of CLS CPLR § 4518 where (1) officer who prepared report was not eyewitness to accident and report contained statements of third parties who were not under duty to give such statements and (2) report contained conclusions as to cause of accident which were not based on postincident expert analysis of observable physical evidence, but were based mainly on hearsay statements of third party. Conners v Duck's Cesspool Service, Ltd., 144 A.D.2d 329, 533 N.Y.S.2d 942, 1988 N.Y. App. Div. LEXIS 11190 (N.Y. App. Div. 2d Dep't 1988).

Teletype printout obtained by police through hookup with Department of Motor Vehicle computers, showing that defendant's vehicle bore license plate number written down by victim, was properly admitted under business record exception to hearsay rule since it was properly authenticated by investigating officer as document obtained in regular course of police business. People v Miller, 150 A.D.2d 910, 541 N.Y.S.2d 257, 1989 N.Y. App. Div. LEXIS 6536 (N.Y. App. Div. 3d Dep't), app. denied, 74 N.Y.2d 815, 546 N.Y.S.2d 573, 545 N.E.2d 887, 1989 N.Y. LEXIS 3619 (N.Y. 1989).

Police accident report of officer, who witnessed car chase and "intentional" ramming of police vehicle in which injured officer was passenger, was properly admitted into evidence as

exception to hearsay rule pursuant to CLS CPLR § 4518(a). Travelers Indem. Co. v Morales, 188 A.D.2d 350, 591 N.Y.S.2d 27, 1992 N.Y. App. Div. LEXIS 13724 (N.Y. App. Div. 1st Dep't 1992).

Police report of accident, in which defendant's car crossed center line and collided with plaintiff's car, was inadmissible as to whether plaintiff's car was in motion at time of collision. Bentley v Moore, 251 A.D.2d 612, 675 N.Y.S.2d 108, 1998 N.Y. App. Div. LEXIS 7968 (N.Y. App. Div. 2d Dep't 1998).

In action by worker on sidewalk construction project who was struck by one or more wooden "forms" that apparently were hit by passing vehicle, police report was insufficient to create triable issue of fact as to identification or causation where it merely contained inadmissible hearsay statement, attributed to unknown declarant, that bus observed in area of accident might have been owned by defendants. Gomes v Courtesy Bus Co., 251 A.D.2d 625, 676 N.Y.S.2d 196, 1998 N.Y. App. Div. LEXIS 7978 (N.Y. App. Div. 2d Dep't 1998).

In action by subrogation plaintiff to recover value of vehicle bailed to defendant's parking garage, defendant submitted competent proof in opposition to plaintiff's summary judgment motion, showing that vehicle was stolen at gunpoint, where police report of theft was based on information from defendant's now deceased garage attendant, who had business duty imposed by his employer to report such events to police; further, more detailed signed statement of criminal incident by deceased employee to insurance investigator, as well as 2 depositions containing considerable hearsay, were also properly considered in opposition to motion. Chubb & Son, Inc. v Riverside Tower Parking Corp., 267 A.D.2d 128, 700 N.Y.S.2d 153, 1999 N.Y. App. Div. LEXIS 12977 (N.Y. App. Div. 1st Dep't 1999).

A police department complaint report was admissible under CPLR § 4518, subd a as a business entry exception to the hearsay rule, where vehicle owner had a contractual obligation under his automobile insurance policy to report theft of vehicle to police, and had a further duty under Penal Law § 240.50 to truthfully report said theft. People v Meyers, 72 Misc. 2d 1003, 340 N.Y.S.2d 505, 1973 N.Y. Misc. LEXIS 2288 (N.Y. City Crim. Ct. 1973).

Certified copy of police teletype report of stolen vehicle, which was obtained from owner's original complaint, was an admissible business entry under CPLR § 4518, and thus was "nonhearsay" evidence within the meaning of CPLR § 100.40, subd c sufficient to establish, if true, that defendants "did not have consent of the owner." People v Fields, 74 Misc. 2d 109, 344 N.Y.S.2d 413, 1973 N.Y. Misc. LEXIS 1964 (N.Y. Dist. Ct. 1973).

In trial for speeding, photocopies of "Certification pursuant to CPLR 4518 of Records Maintained in the Regular Course of Business," prepared Bureau for Municipal Police, and bureau's reports concerning accuracy of radar unit used to measure defendant's speed, were admissible under CLS CPLR § 4518 since (1) copies of original documents in bureau's custody, sent to local police department as matter of bureau's business duty, were business records of local department, (2) such copies were also admissible as "other records" under § 4518(c) because they were police department "papers" under CLS CPLR § 2307, and (3) formalities of certification contained in CLS CPLR § 4540(b) are not required by § 4518(c), and thus officer's affidavit to which copies were annexed, stating that documents were true, complete copies of original records, constituted sufficient certification. In trial for speeding, photocopies of radar activity log and operation certificates were admissible under CLS CPLR § 4518 since (1) they were certified as exact copies of original documents contained in police department files, and (2) reliability of unit in question was established by light test, internal calibration test, and 2 tuning fork tests, and by comparison with calibrated speedometer of arresting officer's car; fact that radar activity log was usable in litigation did not render it inadmissible since it provided permanent record of officer's daily activity and had general use for purposes of traffic control and record-keeping, and thus was admissible as police department business record. People v Farrell, 137 Misc. 2d 926, 523 N.Y.S.2d 383, 1987 N.Y. Misc. LEXIS 2738 (N.Y. J. Ct. 1987).

In prosecution under CLS Veh & Tr § 1192, defendants' motion to suppress breathalyzer test results would be denied, subject to renewal following prosecution's offer of proof as to whether breathalyzer instrument was in proper working order at time test was administered, where defendant argued that test results were inadmissible because breathalyzer instrument was not

calibrated within 6 months prior to date test was administered and because records of test results were not certified within reasonable time after entries were made, since (1) so-called “6-months rule” no longer exists, and (2) test results must be entered in records at time of test or within reasonable time thereafter (CLS CPLR § 4518), but certification of information contained in records may be prepared at any time. People v Pompilio, 137 Misc. 2d 997, 522 N.Y.S.2d 761, 1987 N.Y. Misc. LEXIS 2750 (N.Y. J. Ct. 1987).

In prosecution for driving while ability is impaired by alcohol in violation of CLS Veh & Tr § 1192(1), copies of test results could not be admitted as business records in absence of seals required by CLS CPLR § 4540(b) and either certification by head of agency, or statement that police officer who signed had been designated as legal custodian of records. People v Fiacco, 146 Misc. 2d 330, 549 N.Y.S.2d 901, 1989 N.Y. Misc. LEXIS 830 (N.Y. City Ct. 1989).

In a pedestrian’s suit against an employer to recover for injuries sustained when he was allegedly struck by a truck driven by the employer’s employee, the trial court properly denied the employer’s motion for summary judgmetn because the contemporaneous information provided by anonymous 911 callers, identifying the logo on the truck, were independently admissible under the present sense impression exception to the hearsay rule, and thus, the police reports containing the statements were admissible pursuant to N.Y. C.P.L.R. 4518(a). Steinhaus v American Home Prods. Corp., 18 A.D.3d 312, 795 N.Y.S.2d 41, 2005 N.Y. App. Div. LEXIS 5256 (N.Y. App. Div. 1st Dep't 2005).

Because it was undisputed that the officer who authored an accident report and testified at the trial did not witness the accident and was not qualified as an expert, the statements in the report describing the accident and the officer’s trial testimony concerning the cause of the accident were inadmissible because the source of the information was never identified. Huff v Rodriguez, 45 A.D.3d 1430, 846 N.Y.S.2d 841, 2007 N.Y. App. Div. LEXIS 12035 (N.Y. App. Div. 4th Dep't 2007).

In a legal malpractice case, summary judgment was entered in favor of the attorneys as the decision not to sue the owner of the leased car, on behalf of a wife, that a husband drove in a

crash that formed the basis of an underlying personal injury suit was supported by their statements that he was not negligent, and, further, the wife’s speculation that a more lucrative settlement could have been had was insufficient to support such a claim. Her attempt to support her position through a police report failed as the report was, pursuant to N.Y. C.P.L.R. 4518(a), inadmissible because the reporting officer was not an eye witness to the accident. LaRusso v Katz, 233 N.Y.L.J. 74, 2005 N.Y. Misc. LEXIS 3296 (N.Y. Sup. Ct. Apr. 19, 2005), rev'd, app. dismissed, 30 A.D.3d 240, 818 N.Y.S.2d 17, 2006 N.Y. App. Div. LEXIS 8039 (N.Y. App. Div. 1st Dep't 2006).

32. —Ballistics reports

A ballistics report is admissible into evidence under the business records exception to the hearsay rule, thus eliminating the need for testimony of the police officer who conducted the test. In re Ronald B. (Anonymous), 61 A.D.2d 204, 401 N.Y.S.2d 544, 1978 N.Y. App. Div. LEXIS 9722 (N.Y. App. Div. 2d Dep't 1978).

33. School records

Uncertified, unauthenticated copy of form purporting to be respondent’s school attendance record, which was attached to petition to adjudge her to be person in need of supervision, did not qualify as CLS CPLR § 4518(a) business record in absence of some indication as to when and by whom document was made, and whether it was original attendance record or one prepared with instant proceeding in mind. In re Jodel KK, 189 A.D.2d 63, 595 N.Y.S.2d 835, 1993 N.Y. App. Div. LEXIS 2829 (N.Y. App. Div. 3d Dep't), app. denied, 82 N.Y.2d 652, 601 N.Y.S.2d 582, 619 N.E.2d 660, 1993 N.Y. LEXIS 2282 (N.Y. 1993).

School attendance transcripts offered in evidence in proceedings upon petitions alleging pupils to be persons in need of supervision as consequence of alleged habitual truancy were hearsay and inadmissible under Family Ct. Act and State and Federal Constitutions; transcripts did not

fall within business record exception to 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).

A transcript of a student's record of attendance certified by the Bureau of Attendance of the Board of Education is admissible as competent evidence in a PINS proceeding based on alleged truancy. In re V., 94 Misc. 2d 172, 405 N.Y.S.2d 207, 1978 N.Y. Misc. LEXIS 2212 (N.Y. Fam. Ct. 1978), aff'd, 74 A.D.2d 1008, 1980 N.Y. App. Div. LEXIS 15806 (N.Y. App. Div. 1st Dep't 1980), aff'd, 74 A.D.2d 1008, 1980 N.Y. App. Div. LEXIS 15815 (N.Y. App. Div. 1st Dep't 1980).

Petition charging that a juvenile violated his probation was dismissed as the charge that the juvenile failed to attend school regularly was not supported by sworn nonhearsay allegations pursuant to N.Y. Fam. Ct. Act § 360.2(2) and the petition was jurisdictionally defective; the Presentment Agency's claim that the certified school records were the statutory equivalent of sworn allegations of fact as they conformed to N.Y. C.P.L.R. 4518 was rejected as the formal requirements of N.Y. Fam. Ct. Act § 360.2 had to be strictly complied with. Matter of C.S., 813 N.Y.S.2d 639, 12 Misc. 3d 302, 2006 N.Y. Misc. LEXIS 519 (N.Y. Fam. Ct. 2006).

Submission of a child's school records was precluded in a custody modification proceeding with respect to records that were not properly certified for the business records hearsay exception under N.Y. C.P.L.R. 4518(a), and as to report cards and teacher comments that were clearly testimonial in nature. Devon S. v Aundrea B.-S., 924 N.Y.S.2d 233, 32 Misc. 3d 341, 2011 N.Y. Misc. LEXIS 2072 (N.Y. Fam. Ct. 2011).

Submission of a child's school records was proper in a custody modification proceeding with respect to records that were properly certified for the business records hearsay exception under N.Y. C.P.L.R. 4518(a), as the school principal testified that the records were kept in the normal course of business. Devon S. v Aundrea B.-S., 924 N.Y.S.2d 233, 32 Misc. 3d 341, 2011 N.Y. Misc. LEXIS 2072 (N.Y. Fam. Ct. 2011).

34. State Liquor Authority (SLA) records

An investigative report of the State Liquor Authority was improperly admitted into evidence as a business record under CPLR § 4518(a) to establish defendant tavern owner's negligence in an action for injuries sustained in a fight involving patrons of the tavern in the parking lot, which alleged liability on the basis of defendant's failure to take reasonable precautions for plaintiff's safety, since, although evidence of prior incidents involving breaches of the peace on the premises would have been admissible on the issue of foreseeability, the report was not the vehicle for admission of such evidence as the reports from which it was drawn were inadmissible insofar as they contained hearsay statements relevant to ultimate issues of fact not within the personal knowledge of the police officers; moreover, the report contained inadmissible conclusions and opinions of the police officers who investigated the prior instances, which conclusions would not have been permitted into evidence had the officers been called as witnesses at the trial. Stevens v Kirby, 86 A.D.2d 391, 450 N.Y.S.2d 607, 1982 N.Y. App. Div. LEXIS 15726 (N.Y. App. Div. 4th Dep't 1982).

35. US Customs records

In New York importer's action for fraud in connection with its purchase of textiles under contract requiring that textiles be manufactured in Bangladesh (so that they would not be subject to quotas), in which importer supported its motion for partial summary judgment by submitting United States Customs agent's report stating that subject textiles were manufactured in Pakistan, report was not inadmissible on ground that bank could not depose or cross-examine Customs officials where (1) agent attested to facts that report was made in regular course of business, that it was his duty to make it, that it was accurate, and that redactions in part of report concerned only matters unconnected to manufacturer, and (2) thus, report was admissible as business record under CLS CPLR § 4518. Regent Corp., U.S.A. v Azmat Bangl., Ltd., 253 A.D.2d 134, 686 N.Y.S.2d 24, 1999 N.Y. App. Div. LEXIS 2314 (N.Y. App. Div. 1st Dep't 1999).

Since it was established that the medical records of a worker's treating physician were business records made in the ordinary course of business, the trial court should have allowed those

records into evidence; accordingly, the worker was deprived of a fair trial by this improper evidentiary ruling as well as other things, which provided a further basis on which a new trial in the interest of justice was warranted. Rodriguez v City of New York, 67 A.D.3d 884, 889 N.Y.S.2d 220, 2009 N.Y. App. Div. LEXIS 8441 (N.Y. App. Div. 2d Dep't 2009).

Trial court properly admitted reports of doctors during trial of a child's action against a day care center seeking to recover damages for personal injuries; the reports were properly admitted as documents relating to the child's treatment and condition, N.Y. C.P.L.R. 4518. D. H. v Kindercare Learning Ctr., 6 A.D.3d 220, 774 N.Y.S.2d 527, 2004 N.Y. App. Div. LEXIS 3973 (N.Y. App. Div. 1st Dep't 2004).

III. Medical Records

A. Doctors And Other Medical Professionals

36. Generally

In a medical malpractice action, based on permanent brain damage suffered as a result of heart surgery, the court erred in refusing to apply the doctrine of res ipsa loquitur, based on a finding of an absence of direct evidence as to a specific act of negligence, where it was the need for just such direct evidence that the doctrine was intended to obviate, and in refusing to admit into evidence a report prepared by a physician employed by the defendant stating that plaintiff's behavioral abnormalities, which occurred after surgery, might have been attributable to some sort of vascular insult which occurred during surgery, where the report should have been admitted pursuant to the business records exception to the hearsay evidence rule (CPLR § 4518(a)), as an adequate foundation was laid by the testimony of another physician employed by defendant, describing both the nature and the function of such reports, and adequately identifying the report. However, neither error would require reversal where, considering the other evidence presented on the issue of the abnormalities of behavior and the tentative nature of the

diagnosis contained in the excluded report, it was highly unlikely that the result would have been changed by the admission of the report, where plaintiff had failed to meet his burden of proving that he was in fact normal prior to the operation and had brain damage thereafter, and where the Court of Claims properly concluded that, based on hospital records and the testimony of the surgeon who had performed the operation, there were no deviations from accepted standards, which determinations were supported by the weight of the evidence so that plaintiff could not have prevailed even had the court correctly applied the doctrine of res ipsa loquitur. Walker v State, 111 A.D.2d 164, 488 N.Y.S.2d 793, 1984 N.Y. App. Div. LEXIS 21890 (N.Y. App. Div. 2d Dep't 1984).

In negligence action, testimony of medical secretary employed by plaintiff's former treating physician provided adequate foundation for introduction of plaintiff's medical records where secretary explained that entries in record were made in regular course of business by physician's staff during plaintiff's office visits. McClure v Baier's Automotive Service Center, Inc., 126 A.D.2d 610, 511 N.Y.S.2d 50, 1987 N.Y. App. Div. LEXIS 41745 (N.Y. App. Div. 2d Dep't 1987).

Physician's office records that are supported by statutory foundations under CLS CPLR § 4518 and which are germane to diagnosis and treatment, including medical opinions and conclusions, are admissible as business records since it is business and duty of physicians to diagnose and treat patient's illness. Wilson v Bodian, 130 A.D.2d 221, 519 N.Y.S.2d 126, 1987 N.Y. App. Div. LEXIS 46218 (N.Y. App. Div. 2d Dep't 1987).

Physician's office records were properly received into evidence even though physician who prepared records was available and did, in fact, testify at trial. Napolitano v Branks, 141 A.D.2d 705, 529 N.Y.S.2d 824, 1988 N.Y. App. Div. LEXIS 7092 (N.Y. App. Div. 2d Dep't 1988).

Court erred in allowing doctor's report to be received in evidence where there was no foundational testimony offered as required under CLS CPLR § 4518(a), nor certification or authentication under CLS CPLR § 4518(c). Kasman v Flushing Hosp. & Medical Ctr., 224 A.D.2d 590, 638 N.Y.S.2d 687, 1996 N.Y. App. Div. LEXIS 1364 (N.Y. App. Div. 2d Dep't 1996).

Court properly refused to allow one physician to read statements contained in other physicians' operative reports where each of 3 physicians testified at trial and related procedures they had performed on plaintiff and operative reports they had prepared; to allow one physician to testify as to contents of operative reports he received from other physicians would result in bolstering of their testimony. Cohn v Haddad, 244 A.D.2d 519, 664 N.Y.S.2d 621, 1997 N.Y. App. Div. LEXIS 11855 (N.Y. App. Div. 2d Dep't 1997).

In an action to recover no-fault medical payments, excerpts of an insured's medical records submitted constituted admissible evidence under N.Y. C.P.L.R. § 4518(c) sufficient to raise a triable issue of fact as to whether the insurer was entitled to deny a hospital's claim. St. Vincent's Hosp. of Richmond v Government Employees Ins. Co., 50 A.D.3d 1123, 857 N.Y.S.2d 211, 2008 N.Y. App. Div. LEXIS 3881 (N.Y. App. Div. 2d Dep't 2008).

In a personal injury case, an injured party's failure to object within 10 days did not waive objections to the admissibility of medical records based on other rules of evidence; the injured party was able to object to the records on relevancy grounds, but not as to the admissibility of the records as business records. Siemucha v Garrison, 111 A.D.3d 1398, 975 N.Y.S.2d 518, 2013 N.Y. App. Div. LEXIS 7569 (N.Y. App. Div. 4th Dep't 2013).

In a custody matter, the trial court erred in precluding the entries written in the child's medical records by the nontestifying physicians because the testifying pediatrician was permitted to lay a foundation for entries that he did not personally enter into the child's medical records. Spence-Burke v Burke, 149 A.D.3d 1124, 52 N.Y.S.3d 477, 2017 N.Y. App. Div. LEXIS 3158 (N.Y. App. Div. 2d Dep't 2017).

Trial court properly redacted from the victim's medical records his statement that he did not know who shot him. Although defendant contended that the statement was admissible under the business records exception to the hearsay rule, he failed to establish that the statement in question had any relevance to the victim's diagnosis or treatment. People v Santiago, 156 A.D.3d 1386, 68 N.Y.S.3d 265, 2017 N.Y. App. Div. LEXIS 9135 (N.Y. App. Div. 4th Dep't 2017),

app. denied, 31 N.Y.3d 1017, 102 N.E.3d 1068, 78 N.Y.S.3d 287, 2018 N.Y. LEXIS 1296 (N.Y. 2018).

Plaintiff's attorney in personal injury negligence action made proper foundation for admission of medical treatment record prepared by plaintiff's treating physician when he offered testimony of managing agent for physician's professional corporation that plaintiff was physician's patient, that file in question was kept in regular course of business of physician, and that agent had personally seen file and was familiar with entries in file and doctor's signature to file. Hessek v Roman Catholic Church of Our Lady of Lourdes, 80 Misc. 2d 410, 363 N.Y.S.2d 297, 1975 N.Y. Misc. LEXIS 2189 (N.Y. Civ. Ct. 1975).

Certain statement appearing in the plaintiff's medical records was properly considered under the business records exception to the hearsay rule to defeat the plaintiff's motion for summary judgment. The challenged statement was germane to the plaintiff's medical diagnosis and treatment and, therefore, was admissible under the business records exception. Pillco v 160 Dikeman St., LLC, 2025 N.Y. App. Div. LEXIS 4536 (N.Y. App. Div. 2d Dep't 2025).

Report of doctor who examined parties in order to provide opinions, diagnosis and recommendations at child custody proceeding was not admissible as business record under CLS CPLR § 4518, since (1) reports were not prepared in course of parties' treatment, and any factual information contained therein would be composed of doctor's subjective descriptions of parties, or contentions of parties, (2) doctor's subjective descriptions were inadmissible without his testimony, and (3) parties' contentions were not relevant outside framework of doctor's expert opinion. Palma S. v Carmine S., 134 Misc. 2d 34, 509 N.Y.S.2d 527, 1986 N.Y. Misc. LEXIS 3054 (N.Y. Fam. Ct. 1986).

Affidavit of health care provider's billing manager, though imprecisely worded, sufficed to establish its cause of action prima facie, N.Y. C.P.L.R. 4518(a); moreover, the billing manager was not required to have personal medical knowledge to establish the medical necessity of the assignor's claim inasmuch as a prima facie showing of entitlement to summary judgment was established by the submission of a properly completed claim form. Park Neurological Servs.

P.C. v GEICO Ins., 782 N.Y.S.2d 507, 4 Misc. 3d 95, 2004 N.Y. Misc. LEXIS 728 (N.Y. App. Term 2004).

Trial court properly admitted the statement in the complainant's hospital record that the complainant sustained an injury to her eye "after being punched," as the statement was relevant to the diagnosis and treatment of the complainant's injury. People v Chia Yen Yun, 35 A.D.3d 494, 826 N.Y.S.2d 367, 2006 N.Y. App. Div. LEXIS 14574 (N.Y. App. Div. 2d Dep't 2006), app. denied, 8 N.Y.3d 920, 834 N.Y.S.2d 511, 866 N.E.2d 457, 2007 N.Y. LEXIS 1063 (N.Y. 2007).

Motorist claiming that alleged injured parties' injuries allegedly suffered in a vehicle collision were not "serious injuries," pursuant to N.Y. Ins. Law § 5102(d), was not entitled to summary judgment because uncertified medical records, which were admissible pursuant to the business records exception in N.Y. C.P.L.R. 4518(a) to the hearsay rule, created triable issues as to the motorist's assertion. Carter v Rivera, 880 N.Y.S.2d 462, 24 Misc. 3d 920, 2009 N.Y. Misc. LEXIS 1255 (N.Y. Sup. Ct. 2009).

37. Chiropractor's records

It was improper for trial judge to interrupt summation of juvenile's attorney, to reopen proof, and to order presentment agency to produce victim's chiropractor for testimony when juvenile's attorney properly argued that certified business record of chiropractor was not properly received into evidence under CLS CPLR § 4518. In re Robert W., 212 A.D.2d 1005, 622 N.Y.S.2d 405, 1995 N.Y. App. Div. LEXIS 1880 (N.Y. App. Div. 4th Dep't), app. denied, 86 N.Y.2d 702, 631 N.Y.S.2d 606, 655 N.E.2d 703, 1995 N.Y. LEXIS 2745 (N.Y. 1995).

Although the medical records of a chiropractor who treated a subway accident victim could have been admissible as business records, the victim's failure to provide any sort of foundation in the form of testimony from someone familiar with the manner in which such records were kept precluded their admission. Faust v N.Y. City Transit Auth., 783 N.Y.S.2d 197, 4 Misc. 3d 89, 2004 N.Y. Misc. LEXIS 827 (N.Y. App. Term 2004).

Because no testimony was offered concerning a chiropractor's record keeping practices, that the documents were "made" in the regular course of the chiropractor's business, that it was the regular course of the chiropractor's business to "make" the records, who made the entries in the records, how the entries in the records were recorded, who provided the information contained in the records, and whether the entries were made contemporaneously with the events recorded or within a reasonable time thereafter, the records were inadmissible as a business record under N.Y. C.P.L.R. 4518(a). People v Ridge, 887 N.Y.S.2d 811, 25 Misc. 3d 432, 242 N.Y.L.J. 22, 2009 N.Y. Misc. LEXIS 1795 (N.Y. Dist. Ct. 2009).

38. Contents of records

Doctor's records interwoven with his opinions and diagnosis were improperly admitted in evidence despite fact that doctor was disabled from testifying and nurse identified such records as having been made by doctor in ordinary course of business. Rodriguez v Zampella, 42 A.D.2d 805, 346 N.Y.S.2d 558, 1973 N.Y. App. Div. LEXIS 4596 (N.Y. App. Div. 2d Dep't 1973).

In medical malpractice action, it was error to admit that portion of referring physician's records containing notation "BX nose lesion," and used by patient to prove that prior biopsy had been performed, since there was no proof that notation was "well known and usual" in medical community and doctor who made entry did not testify at trial; moreover, even assuming that term "BX" did mean biopsy, there was no evidence as to who performed test, when test was performed, or results of such test, and thus any probative value of notation was outweighed by lack of opportunity to test factual assumption by cross-examination. Wilson v Bodian, 130 A.D.2d 221, 519 N.Y.S.2d 126, 1987 N.Y. App. Div. LEXIS 46218 (N.Y. App. Div. 2d Dep't 1987).

In personal injury action arising from automobile accident, report prepared by plaintiff's physician was not admissible as business record under CLS CPLR § 4518 where it was medical report and interpretation of MRI film, as opposed to day-to-day business entry of treating physician.

Komar v Showers, 227 A.D.2d 135, 641 N.Y.S.2d 643, 1996 N.Y. App. Div. LEXIS 4743 (N.Y. App. Div. 1st Dep't 1996).

Defendant failed to establish claim of ineffective assistance of counsel based on counsel's failure to move to redact portions of victim's medical records in defendant's rape trial because, inter alia, the records were admissible under N.Y. C.P.L.R. 4518(c), and victim's statements in those records indicating that she was raped or sexually abused were germane to her treatment. People v Thomas, 53 A.D.3d 1099, 861 N.Y.S.2d 901, 2008 N.Y. App. Div. LEXIS 5978 (N.Y. App. Div. 4th Dep't 2008), app. denied, 11 N.Y.3d 795, 866 N.Y.S.2d 621, 896 N.E.2d 107, 2008 N.Y. LEXIS 3858 (N.Y. 2008).

Defendant failed to establish claim of ineffective assistance of counsel based on counsel's failure to move to redact portions of victim's medical records in defendant's rape trial because, inter alia, the records were admissible under N.Y. C.P.L.R. 4518(c), and, although the victim's statements in the records concerning the identity of the perpetrator were not germane to her treatment, defendant failed to show that he was deprived of a fair trial and meaningful representation sufficient to warrant a reversal based on this; identity was not at issue in the trial, and any error in the admission of those portions of the records was harmless. People v Thomas, 53 A.D.3d 1099, 861 N.Y.S.2d 901, 2008 N.Y. App. Div. LEXIS 5978 (N.Y. App. Div. 4th Dep't 2008), app. denied, 11 N.Y.3d 795, 866 N.Y.S.2d 621, 896 N.E.2d 107, 2008 N.Y. LEXIS 3858 (N.Y. 2008).

Because the reference to intoxication in defendant's medical records was not admissible under N.Y. C.P.L.R. 4518(a), defendant was entitled to a new trial. People v Johnson, 70 A.D.3d 1188, 896 N.Y.S.2d 199, 2010 N.Y. App. Div. LEXIS 1395 (N.Y. App. Div. 3d Dep't 2010).

Five electro-encephalograms administered to plaintiff by a physician deceased at the time of trial and office cards written in the physician's handwriting were admissible as records kept in the regular and ordinary course of the deceased doctor's business as a medical practitioner. Jezowski v Beach, 59 Misc. 2d 224, 298 N.Y.S.2d 360, 1968 N.Y. Misc. LEXIS 1018 (N.Y. Sup. Ct. 1968).

Where plaintiff's treating physician was available to testify in personal injury negligence action but demanded unconscionable fee for such testimony, plaintiff's medical treatment record with said physician, proved as business record, was admissible in evidence to show dates of plaintiff's treatments rendered, complaints, physical examination, medicinal prescriptions, laboratory reports, progress record and discharge record. Hessek v Roman Catholic Church of Our Lady of Lourdes, 80 Misc. 2d 410, 363 N.Y.S.2d 297, 1975 N.Y. Misc. LEXIS 2189 (N.Y. Civ. Ct. 1975).

Where the trial court, after precluding the patient from introducing certain hospital records in the medical malpractice case, thereby preventing the patient from being able to present a prima facie case, granted defendants' N.Y. C.P.L.R. 4401 motion to dismiss, the trial court erred in precluding the records and in granting the motion; the medical records at issue were germane to the diagnosis and treatment of the patient and were, therefore, admissible under N.Y. C.P.L.R. 4518. Rodriguez v Piccone, 5 A.D.3d 757, 774 N.Y.S.2d 185, 2004 N.Y. App. Div. LEXIS 3571 (N.Y. App. Div. 2d Dep't 2004).

Assignee failed to lay a proper foundation for the admission of a claim form in its first-party no-fault benefits case against an insurer because the claim form incorporated records in the patient's file, but no witness established that the documents in the patient file were business records under N.Y. C.P.L.R. 4518(a) or that the file documents were admissible under any other hearsay exception. Second Med., P.C. v Auto One Ins. Co., 857 N.Y.S.2d 898, 20 Misc. 3d 291, 239 N.Y.L.J. 89, 2008 N.Y. Misc. LEXIS 2613 (N.Y. Civ. Ct. 2008).

39. Medical examiner's records; autopsies

In action brought by passenger who was injured when driver lost control of the automobile and crashed, trial judge did not abuse his discretion in setting aside jury verdict in favor of defendant in view of trial judge's error in failing to admit certified copy of medical examiner's autopsy report to rebut defense of heart attack and in view of error in giving instruction concerning contributory

negligence. Nau v Ferrante, 52 A.D.2d 523, 381 N.Y.S.2d 512, 1976 N.Y. App. Div. LEXIS 12051 (N.Y. App. Div. 1st Dep't 1976).

It was improper for Workmen's Compensation Board to receive in evidence copy of police laboratory report of blood-alcohol content of deceased employee, who was killed in fatal automobile accident while operating station wagon owned by his employer, which report stated that blood sample had been obtained by coroner pursuant to statute mandating coroner to make quantitative tests for alcohol on bodies of certain individuals killed in motor vehicle accident, in light of further provision of said statute that such results were to be used only for purpose of compiling statistical data and were not to be admitted into evidence or otherwise disclosed in any legal action or proceeding; nor was lab report admissible under business records statute. Rourke v Carl's Drug Co., 56 A.D.2d 202, 392 N.Y.S.2d 498, 1977 N.Y. App. Div. LEXIS 10046 (N.Y. App. Div. 3d Dep't 1977).

Autopsy report and blood analysis are properly admitted, and fact that medical expert did not perform subject examination affects at most weight of testimony, not its admissibility. Tinao v New York, 112 A.D.2d 363, 491 N.Y.S.2d 814, 1985 N.Y. App. Div. LEXIS 56496 (N.Y. App. Div. 2d Dep't 1985), app. denied, 67 N.Y.2d 603, 499 N.Y.S.2d 1029, 490 N.E.2d 864, 1986 N.Y. LEXIS 16623 (N.Y. 1986).

Autopsy report is public record which is admissible into evidence in criminal trial without offending hearsay rule or defendant's right of confrontation; however, while autopsy findings are admissible to establish primary facts stated therein, opinions as to cause of death contained in such report are not admissible. People v Violante, 144 A.D.2d 995, 534 N.Y.S.2d 281, 1988 N.Y. App. Div. LEXIS 14535 (N.Y. App. Div. 4th Dep't 1988), app. denied, 73 N.Y.2d 897, 538 N.Y.S.2d 810, 535 N.E.2d 1350, 1989 N.Y. LEXIS 1265 (N.Y. 1989).

Opinion of medical examiner regarding cause of victim's death failed to qualify as business record since medical examiner was under no duty to review criminal file and render opinion 8 years after crime. People v Ruff, 185 A.D.2d 454, 586 N.Y.S.2d 327, 1992 N.Y. App. Div. LEXIS

8960 (N.Y. App. Div. 3d Dep't 1992), aff'd, 81 N.Y.2d 330, 599 N.Y.S.2d 221, 615 N.E.2d 611, 1993 N.Y. LEXIS 1734 (N.Y. 1993).

Trial court's admission of DNA evidence in a medical examiner's file as a business record under N.Y. C.P.L.R. 4518(a) in a sexual assault trial was proper and did not violate defendant's Sixth Amendment rights; a forensic biologist in the medical examiner's office testified that the data on which she based her opinions was generated by employees of both the medical examiner's office and a private laboratory, and that she had confirmed the accuracy of the private laboratory's finding. People v Brown, 50 A.D.3d 1154, 856 N.Y.S.2d 672, 2008 N.Y. App. Div. LEXIS 3901 (N.Y. App. Div. 2d Dep't 2008), aff'd, 13 N.Y.3d 332, 890 N.Y.S.2d 415, 918 N.E.2d 927, 2009 N.Y. LEXIS 4047 (N.Y. 2009).

Even if no foundation had been laid under Business Records Act, duly authenticated lab reports of county crime laboratory concerning vaginal smears taken from alleged rape victim would have been admissible in rape prosecution as properly authenticated records of a municipal department. People v Mack, 86 Misc. 2d 364, 382 N.Y.S.2d 424, 1976 N.Y. Misc. LEXIS 2448 (N.Y. Sup. Ct. 1976).

Although duly authenticated reports of county crime laboratory concerning examination of vaginal smears taken from alleged rape victim could have been relied on by defendant's expert medical witness even if they had not been admitted into evidence and even though reports were heavily on ultimate issue of guilt or innocence, the People had the right to inquire into the sources of the expert's information on cross-examination. People v Mack, 86 Misc. 2d 364, 382 N.Y.S.2d 424, 1976 N.Y. Misc. LEXIS 2448 (N.Y. Sup. Ct. 1976).

Even if duly authenticated reports of county crime laboratory concerning examination of vaginal smears taken from alleged rape victim had not been admitted in evidence, defendant's expert medical witness could have relied on them as basis for his expert opinion, notwithstanding that he did not personally examine the victim. People v Mack, 86 Misc. 2d 364, 382 N.Y.S.2d 424, 1976 N.Y. Misc. LEXIS 2448 (N.Y. Sup. Ct. 1976).

An opinion concerning cause of death, contained in an autopsy report, an exhibit which is otherwise unobjectionable in that it falls within the purview of either the business entry or the public document exception to the hearsay rule, would be admissible in an action for wrongful death where the autopsy was performed by a physician who held the position of Deputy Chief Medical Examiner of a county, and who was thus qualified to render such an opinion. Walters v State, 125 Misc. 2d 604, 479 N.Y.S.2d 964, 1984 N.Y. Misc. LEXIS 3455 (N.Y. Ct. Cl. 1984).

Because the lab reports created from analysis of defendant's saliva were business records that were not testimonial in nature, their admission, pursuant to N.Y. C.P.L.R. 4518(a), through a forensic geneticist's testimony did not violate defendant's right to confrontation; accordingly, there was no basis to suppress them. People v Dail, 69 A.D.3d 873, 894 N.Y.S.2d 78, 2010 N.Y. App. Div. LEXIS 517 (N.Y. App. Div. 2d Dep't), app. denied, 14 N.Y.3d 839, 901 N.Y.S.2d 146, 927 N.E.2d 567, 2010 N.Y. LEXIS 1477 (N.Y. 2010), app. denied sub nom. People v William, 14 N.Y.3d 845, 901 N.Y.S.2d 152, 927 N.E.2d 573, 2010 N.Y. LEXIS 1590 (N.Y. 2010).

40. Nurse's records

The notes of the nurses, who attended the plaintiff in a negligence action, contained in the hospital records and made in the regular course of business are admissible in evidence under this section, the primary purpose of which is to permit the admission of a record made in the regular course of business without having to call as a witness every person who had made the record. Spoar v Fudjack, 24 A.D.2d 731, 263 N.Y.S.2d 340, 1965 N.Y. App. Div. LEXIS 3378 (N.Y. App. Div. 4th Dep't 1965).

Alleged business records kept by practical nurse as to which doctor testified they were "nothing" and he would not "even bother to look at them," were properly not admitted in will contest where they were of insufficient import to have changed the result. In re Will of Potter, 24 A.D.2d 812, 263 N.Y.S.2d 910, 1965 N.Y. App. Div. LEXIS 3125 (N.Y. App. Div. 3d Dep't 1965).

41. Osteopath's records

Court in personal injury action did not abuse its discretion in admitting complete medical file of plaintiff's treating osteopathic physician (including records, reports and correspondence generated by other medical specialists and laboratories) where treating physician's testimony established that medical records related to diagnosis and treatment of plaintiff's injuries. Freeman v Kirkland, 184 A.D.2d 331, 584 N.Y.S.2d 828, 1992 N.Y. App. Div. LEXIS 8111 (N.Y. App. Div. 1st Dep't 1992).

42. Pharmacist's records

In proceedings for suspension of pharmacist's license, records of pharmacist and his wholesale supplier were admissible as business records. Jay v Board of Regents, 50 A.D.2d 967, 376 N.Y.S.2d 664, 1975 N.Y. App. Div. LEXIS 11926 (N.Y. App. Div. 3d Dep't 1975).

43. Other medical professional's records

A trial court properly refused to permit a doctor to testify, at defendant's trial for a crime committed in 1977, concerning a 1970 diagnosis of defendant's mental condition or the records upon which the diagnosis was based, where said diagnosis was based wholly on information obtained and recorded by medical students and residents, which the doctor only reviewed, and there was no showing that it was the regular course of the hospital's business to make such records (CPLR 4518, subd a) or that the records bore a certification or authentication by the head of the hospital (CPLR 4518, subd c), since the diagnosis was based entirely on hearsay; moreover, the 1970 diagnosis was so far removed from the 1977 crime as to be virtually devoid of any probative significance. People v McKinley, 72 A.D.2d 470, 424 N.Y.S.2d 941, 1980 N.Y. App. Div. LEXIS 9705 (N.Y. App. Div. 4th Dep't), app. denied, 49 N.Y.2d 894, 1980 N.Y. LEXIS 5451 (N.Y. 1980).

In action by junior flight attendant against captain, alleging that captain burst into her hotel room through locked door which adjoined his room and committed battery on her while in intoxicated state, letter written by plaintiff's father, who was physician and treated her for injuries sustained

in incident, to psychiatrist who treated plaintiff for emotional problems arising from incident, was properly admitted as business record of plaintiff's father. Fanelli v di Lorenzo, 187 A.D.2d 1004, 591 N.Y.S.2d 658, 1992 N.Y. App. Div. LEXIS 14035 (N.Y. App. Div. 4th Dep't 1992).

Where it was found that the trial court properly admitted into evidence defendant's assaults against the decedent in the murder case in order to show, among other things, intent, the trial court did not err in admitting into evidence the decedent's hospital records pertaining to a prior assault by defendant; pursuant to N.Y. C.P.L.R. 4518, statements made by the decedent in the medical records were germane to the decedent's then medical diagnosis and treatment. People v James, 19 A.D.3d 616, 797 N.Y.S.2d 129, 2005 N.Y. App. Div. LEXIS 6931 (N.Y. App. Div. 2d Dep't), app. denied, 5 N.Y.3d 807, 803 N.Y.S.2d 36, 836 N.E.2d 1159, 2005 N.Y. LEXIS 2851 (N.Y. 2005).

Hospital and medical records were properly admitted as they were properly certified under N.Y. C.P.L.R. 4518(c). Matter of Kai B., 38 A.D.3d 882, 834 N.Y.S.2d 216, 2007 N.Y. App. Div. LEXIS 4045 (N.Y. App. Div. 2d Dep't 2007).

Medical director's testimony did not establish a proper foundation for the admission of a child sexual abuse victim's medical report, as the director was not employed by the child advocacy center at the time the examination occurred, did not prepare the medical report, and did not provide sufficient testimony concerning the period of time when the report was made and whether it was made in the regular course of business at that time, but the error was harmless. People v Hires, 2025 N.Y. App. Div. LEXIS 3773 (N.Y. App. Div. 2d Dep't 2025).

Deceased physician's records which are identified and shown to have been kept in regular course of business are admissible. Hessek v Roman Catholic Church of Our Lady of Lourdes, 80 Misc. 2d 410, 363 N.Y.S.2d 297, 1975 N.Y. Misc. LEXIS 2189 (N.Y. Civ. Ct. 1975).

Former husband only offered evidence to show that he satisfied one-half of his obligation from a settlement agreement that had been incorporated into the parties' divorce judgment with respect to his payment of the wife's dental expenses; an uncertified letter from the dentist indicating

further payments was not deemed reliable where it was not made contemporaneously with the alleged payments and there was no showing that it was made in the ordinary course of business pursuant to N.Y. C.P.L.R. 4518(a). Matter of Gambacorta v Gambacorta, 45 A.D.3d 839, 846 N.Y.S.2d 362, 2007 N.Y. App. Div. LEXIS 12154 (N.Y. App. Div. 2d Dep't 2007).

B. Hospital Records

44. Generally

Hospital records relating to plaintiff as patient should have borne certification or authorization of the hospital or have been qualified by witness as evidence admissible in personal injury suit under the class of entries made in the regular course of business. Nelson v X-Ray Sys., 46 A.D.2d 995, 361 N.Y.S.2d 468, 1974 N.Y. App. Div. LEXIS 3485 (N.Y. App. Div. 4th Dep't 1974).

There was proof beyond a reasonable doubt that the age of a robbery victim was 62 years of age or more where the Family Court based its conclusion on a statement that she was 73 years of age contained in the hospital record of her medical treatment resulting from the attack, which record was admitted into evidence (CPLR 4518, subd [c]), and the Trial Judge’s statement at the dispositional hearing that based on his personal observation of the victim’s appearance at the fact-finding hearing, she was over 62 years of age; it was proper to admit the hospital record into evidence without a notarized signature of the assistant director of the hospital who certified it since CPLR 4518 (subd [c]) contains no requirement that the signature of the authenticator be notarized, nor need a witness be called to testify that the record was kept in the ordinary course of business as the purpose of CPLR 4518 (subd [c]) is to allow the admission into evidence of municipal hospital records or copies thereof without calling such a witness (CPLR 2306, 2307), and the Family Court was justified in concluding that the assistant director of the hospital had authority to certify the hospital record (CPLR 4518, subd [c]; 2306, subd [a]); the entry in the hospital record that the victim was 73 years of age was properly admitted in evidence inasmuch as a patient’s history, necessary or helpful to the observation, diagnosis and treatment of the

patient, is ordinarily admissible as part of the hospital record and, in view of the injuries inflicted upon the victim during the robbery, knowledge of her age was a relevant factor in the diagnosis and treatment by the hospital's medical staff. In re Quinton A., 68 A.D.2d 394, 417 N.Y.S.2d 738, 1979 N.Y. App. Div. LEXIS 10952 (N.Y. App. Div. 2d Dep't 1979), rev'd, 49 N.Y.2d 328, 425 N.Y.S.2d 788, 402 N.E.2d 126, 1980 N.Y. LEXIS 2077 (N.Y. 1980).

In an action in which plaintiff sought to recover for injuries he had sustained in an automobile accident, the trial court erred in refusing to admit as evidence medical records of plaintiff which had been duly and properly authenticated by their custodian and which had been voluntarily produced by a sister-state hospital since CPLR § 4518(c) did not limit admissibility to only those records which had been produced by subpoena. Joyce v Kowalcewski, 80 A.D.2d 27, 437 N.Y.S.2d 809, 1981 N.Y. App. Div. LEXIS 9739 (N.Y. App. Div. 4th Dep't 1981).

Plaintiffs in a negligence action would be required to furnish certain medical and hospital authorizations, where there was no claim that the requested material was prepared for litigation and where there could be no claim of a violation of the physician-patient privilege, inasmuch as plaintiff had waived the privilege when he put his condition in issue. Pizzo v Bunora, 89 A.D.2d 1013, 454 N.Y.S.2d 455, 1982 N.Y. App. Div. LEXIS 18269 (N.Y. App. Div. 2d Dep't 1982).

In an action on a life insurance policy, documents relied on by the insurer to prove decedent's prior medical history and misrepresentations in his application for insurance were admissible as business records pursuant to CPLR § 4518 since the documents were procured in the ordinary course of business while the insurer was investigating the circumstances of decedent's death. Borchardt v New York Life Ins. Co., 102 A.D.2d 465, 477 N.Y.S.2d 167, 1984 N.Y. App. Div. LEXIS 18807 (N.Y. App. Div. 1st Dep't), aff'd, 63 N.Y.2d 1000, 483 N.Y.S.2d 1012, 473 N.E.2d 262, 1984 N.Y. LEXIS 4753 (N.Y. 1984).

In a negligence action against defendant village by plaintiff, who was severely injured when he dove into a lagoon operated by defendant, a statement of plaintiff from the discharge summary of the hospital in which plaintiff was treated, which statement was read to the jury, was double hearsay and, even if plaintiff's statement were admissible under an exception to the hearsay

rule, the summary would not have been admissible in that plaintiff's girlfriend, who reported plaintiff's statement in the summary, had no duty to report plaintiff's version of the accident to the hospital, and the contents of her statement had no relevance to the diagnosis or treatment of plaintiff's condition, thus making the business record exception to the hearsay rule inapplicable; the contents of an emergency ambulance report was similarly improperly admitted, where the document was received into evidence without any testimony to establish the document's authenticity or that it was in fact a document prepared in the ordinary course of business of the ambulance service as required by CPLR § 4518(a), and where it did not appear that the volunteer ambulance service could be characterized as a department or bureau of a municipal corporation or the state, so as to dispense with the need for an authenticating witness as required by CPLR § 4518(c). O'Connor v Port Jefferson, 104 A.D.2d 861, 480 N.Y.S.2d 376, 1984 N.Y. App. Div. LEXIS 20333 (N.Y. App. Div. 2d Dep't 1984).

Admission into evidence of uncertified and unauthenticated hospital and medical bills in non-jury trial, although error, was harmless where testimony of plaintiff and her physician established reasonable value of medical services for which plaintiff was responsible. Hahn v Niagara Falls, 143 A.D.2d 517, 533 N.Y.S.2d 37, 1988 N.Y. App. Div. LEXIS 10650 (N.Y. App. Div. 4th Dep't 1988).

Determination by Family Court in proceeding pursuant to CLS Family Ct Act Art 3, finding appellant to be juvenile delinquent and placing him on probation, would be affirmed, and appellant's argument that Family Court erred in refusing to consider contents of uncertified hospital record of complainant would be rejected, since uncertified hospital record was inadmissible under CLS Family Ct Act § 744, providing that evidence must be competent, material and relevant to be admitted, and under CLS CPLR § 4518(c), providing that hospital records must be certified or authenticated to be admitted. In re Damon J., 144 A.D.2d 467, 534 N.Y.S.2d 23, 1988 N.Y. App. Div. LEXIS 11758 (N.Y. App. Div. 2d Dep't 1988).

In robbery trial, victim's hospital records were properly admitted as business record under CLS CPLR § 4518. People v Watson, 205 A.D.2d 398, 613 N.Y.S.2d 613, 1994 N.Y. App. Div. LEXIS

6362 (N.Y. App. Div. 1st Dep't 1994), app. denied, 84 N.Y.2d 834, 617 N.Y.S.2d 154, 641 N.E.2d 175, 1994 N.Y. LEXIS 3807 (N.Y. 1994).

In action against city and others for personal injuries allegedly sustained when plaintiff was stabbed in hospital stairwell, judgment on jury verdict for plaintiff would be reversed, and new trial would be ordered, where (1) court improperly admitted memorandum on security at hospital when plaintiff was attacked, because memorandum was not business record and included discussion of postaccident remedial measures, (2) court improperly allowed hearsay testimony about content of newspaper articles, (3) court improperly precluded cross-examination of plaintiff as to whether he had improperly kept public document, which act tended to show moral turpitude and thus was relevant to credibility, (4) court improperly excluded evidence that plaintiff was not stabbed in stairwell, including expert testimony that blood should have been found in stairwell if plaintiff were stabbed there, and (5) viewed collectively, errors were not harmless. Platovsky v City of New York, 275 A.D.2d 699, 713 N.Y.S.2d 358, 2000 N.Y. App. Div. LEXIS 9155 (N.Y. App. Div. 2d Dep't 2000).

Since the counselor’s notes of the victim’s post-incident sexual abuse counseling sessions did not satisfy the certification requirements of N.Y. C.P.L. R. 4518(c), they were not admissible as evidence. People v Benedetto, 294 A.D.2d 958, 744 N.Y.S.2d 92, 2002 N.Y. App. Div. LEXIS 4524 (N.Y. App. Div. 4th Dep't 2002).

In plaintiffs’ suit, brought against home owners after the injured plaintiff tripped and fell on a loose board in the owners’ backyard, causing him to fall into the attached pool and sustain injuries, summary judgment was properly granted to plaintiffs on the issue of liability as the owners failed to tender admissible evidence sufficient to raise a triable issue of fact as to the proximate cause of the injured plaintiff’s injuries. Notations in the hospital record upon which defendants relied were not attributed to the injured plaintiff, and in event, none of the notations was germane to his diagnosis or treatment and would not have been admissible at trial for their truth under the business records exception to the hearsay rule. Sermos v Gruppuso, 95 A.D.3d 985, 944 N.Y.S.2d 245, 2012 N.Y. App. Div. LEXIS 3601 (N.Y. App. Div. 2d Dep't 2012).

Where entry in hospital records stated that it was felt by observers in the clinic that a patient presented a difficult suicidal risk, and it was shown that the clinic was an integral part of the hospital and under an obligation to impart such beliefs, and the hospital under an equal duty to receive and record such impressions, the entry was admissible. Kardas v State, 44 Misc. 2d 243, 253 N.Y.S.2d 470, 1964 N.Y. Misc. LEXIS 1358 (N.Y. Ct. Cl. 1964), rev'd, 24 A.D.2d 789, 263 N.Y.S.2d 727, 1965 N.Y. App. Div. LEXIS 3224 (N.Y. App. Div. 3d Dep't 1965).

In personal injury action, court would deny defendant’s motion in limine to preclude plaintiff from introducing X rays into evidence which did not comply with authentication and notice requirements of CLS CPLR § 4532-a since literal compliance with statute was not required where plaintiff asserted (1) that X rays were part of his hospital records which were otherwise admissible as business records under CLS CPLR §§ 2306 and 4518, and (2) X rays were in court pursuant to defendant’s own subpoena. Hoffman v New York, 141 Misc. 2d 893, 535 N.Y.S.2d 342, 1988 N.Y. Misc. LEXIS 713 (N.Y. Sup. Ct. 1988).

Hospital was not entitled to summary judgment in its action to recover assigned first-party no-fault benefits under N.Y. Ins. Law § 5106(a) because it failed to demonstrate that its records were admissible under N.Y. C.P.L.R. 4518(a), no certification was provided, and no employee affidavit was submitted attesting to the truth of any of the contents of the records. NYU Hosp. for Joint Diseases v State Farm Mut. Auto. Ins. Co., 959 N.Y.S.2d 799, 38 Misc. 3d 41, 2012 N.Y. Misc. LEXIS 5698 (N.Y. App. Term 2012).

There was no error in the trial court’s redaction of defendant’s hospital medical records in view of the absence of any testimony establishing a foundation for or explaining their contents. People v Wojes, 306 A.D.2d 754, 763 N.Y.S.2d 103, 2003 N.Y. App. Div. LEXIS 7431 (N.Y. App. Div. 3d Dep't), app. denied, 100 N.Y.2d 600, 766 N.Y.S.2d 176, 798 N.E.2d 360, 2003 N.Y. LEXIS 3676 (N.Y. 2003).

Deceased tenant's hospital records were admissible in a landlord's holdover proceeding against the tenant's granddaughter, even though the tenant's statements in the records constituted hearsay, because the tenant had been diagnosed with cancer, was to be treated post-discharge

with chemotherapy administered bi-weekly, and formulating a discharge plan was an important part of the tenant's treatment. 50 Lefferts LLC v Cole, 50 Misc. 3d 617, 19 N.Y.S.3d 405, 2015 N.Y. Misc. LEXIS 4086 (N.Y. Civ. Ct. 2015).

45. Cause of hospital admission noted on hospital record

In a negligence action against defendants city and transit authority to recover damages for personal injuries allegedly sustained by plaintiff as she alighted from a city bus, judgment for defendants would be reversed on the ground that the trial court improperly admitted the history portion of plaintiff's medical record into evidence, where the entry, which contained information relating to how the accident occurred, was not admissible as a business record under CPLR § 4518 in that it was not germane to plaintiff's diagnosis or treatment, and could not be received into evidence as an admission in that the hospital employee who entered the information was unable to say that the information was based on statements made by plaintiff. Gunn v New York, 104 A.D.2d 848, 480 N.Y.S.2d 365, 1984 N.Y. App. Div. LEXIS 20325 (N.Y. App. Div. 2d Dep't 1984).

In action against city to recover damages for assault and battery in which it was alleged that defendant police officers struck plaintiff on his legs and head with nightsticks, it was prejudicial error to admit evidence of hearsay statement contained in hospital records, to effect that plaintiff had fallen at home, since (1) statement attributed to plaintiff was not germane to his diagnosis or treatment and thus was not admissible as integral part of hospital records, and (2) source of statement was unclear and thus statement did not qualify as plaintiff's admission. Echeverria v New York, 166 A.D.2d 409, 560 N.Y.S.2d 473, 1990 N.Y. App. Div. LEXIS 11819 (N.Y. App. Div. 2d Dep't 1990).

In prosecution for second degree assault under CLS Penal § 120.05(2), wherein it was alleged that defendant punched victim with fist containing "printer's guide," court did not err in admitting, under business records exception to hearsay rule, portion of victim's hospital records indicating that victim had claimed he was hit with fist in which there was metal object, since such

statement was relevant to diagnosis and treatment of victim's injuries. People v Goode, 179 A.D.2d 676, 578 N.Y.S.2d 611, 1992 N.Y. App. Div. LEXIS 246 (N.Y. App. Div. 2d Dep't), app. denied, 79 N.Y.2d 1001, 584 N.Y.S.2d 456, 594 N.E.2d 950, 1992 N.Y. LEXIS 2700 (N.Y. 1992).

In prosecution for second degree murder, attempted second degree murder, first degree assault, first degree use of firearm, and firearm possession, victim's emergency-room records containing reference that he had been shot in drive-by shooting were inadmissible under business records exception to hearsay rule where emergency-room physician who treated victim testified that manner in which victim sustained gunshot wounds was irrelevant to his diagnosis and treatment, victim denied telling emergency-room personnel that he had been injured in drive-by shooting, and source of information in hospital records was unknown. People v Townsley, 240 A.D.2d 955, 659 N.Y.S.2d 906, 1997 N.Y. App. Div. LEXIS 6971 (N.Y. App. Div. 3d Dep't), app. denied sub nom. People v T-Rock, 90 N.Y.2d 943, 664 N.Y.S.2d 762, 687 N.E.2d 659, 1997 N.Y. LEXIS 4906 (N.Y. 1997), app. denied, 90 N.Y.2d 943, 664 N.Y.S.2d 762, 687 N.E.2d 659, 1997 N.Y. LEXIS 3877 (N.Y. 1997), app. denied, 90 N.Y.2d 1014, 666 N.Y.S.2d 110, 688 N.E.2d 1394, 1997 N.Y. LEXIS 4042 (N.Y. 1997), app. denied sub nom. People v T-Rock, 90 N.Y.2d 1015, 666 N.Y.S.2d 110, 688 N.E.2d 1394, 1997 N.Y. LEXIS 4916 (N.Y. 1997).

Court erred in denying medical malpractice plaintiff's motion to preclude admission into evidence of entry in hospital record of plaintiff's daughter and incident report prepared by hospital emergency room nurse, both of which purported to relate what plaintiff told nurse after her daughter fell from examining table, since entry and incident report were germane neither to treatment nor to diagnosis and thus were not admissible under business records exception to hearsay rule, nor were they admissible as admission since nurse's testimony was equivocal at best as to what plaintiff told her; thus, court should have granted plaintiff's motion to set aside verdict as against weight of evidence. Musaid v Mercy Hosp., 249 A.D.2d 958, 672 N.Y.S.2d 573, 1998 N.Y. App. Div. LEXIS 5079 (N.Y. App. Div. 4th Dep't 1998).

Hospital triage report containing conflicting information on whether plaintiff's injuries were caused by fall from negligently maintained fire escape or jump from window to escape fire was inadmissible where (1) plaintiff spoke only Spanish, (2) nurse who prepared report never spoke to plaintiff about cause of her injuries and left it unclear whether he obtained his information from Emergency Medical Service (EMS) worker, hospital translator, or both, neither of whom was called as witness, (3) it was also unclear whether translator obtained such information from plaintiff, EMS worker, or both, (4) history part of report was not admissible under business records exception to hearsay rule, because cause of plaintiff's injuries was not germane to her diagnosis or treatment, and (5) claim that translator was plaintiff's agent was "quantum leap." Quispe v Lemle & Wolff, Inc., 266 A.D.2d 95, 698 N.Y.S.2d 652, 1999 N.Y. App. Div. LEXIS 11676 (N.Y. App. Div. 1st Dep't 1999).

In a personal injury action involving an elevator, the cause of the accident was speculative as the decedent was not deposed prior to his death; statements as to the cause contained in the accident report and the decedent's hospital records constituted inadmissible hearsay, and plaintiff failed to lay the foundation for their admission as business records under N.Y. C.P.L.R. § 4518(a). Stock v Otis El. Co., 52 A.D.3d 816, 861 N.Y.S.2d 722, 2008 N.Y. App. Div. LEXIS 5728 (N.Y. App. Div. 2d Dep't 2008).

46. Diagnosis and treatment records

Hospital record containing entry made in the regular course of the business of the hospital, containing information necessary to the diagnosis and treatment of decedent's condition and containing information given by the decedent himself, was competent, probative evidence of the occurrence stated therein. Tassillo v Gilbert Carrier Corp., 30 A.D.2d 8, 289 N.Y.S.2d 485, 1968 N.Y. App. Div. LEXIS 4114 (N.Y. App. Div. 3d Dep't), app. denied, 22 N.Y.2d 645, 1968 N.Y. LEXIS 2113 (N.Y. 1968).

An entry in a hospital record comes within the statutory business record rule only if it is relevant to diagnosis or treatment of the patient's ailment. If it is not so relevant, the entry cannot be said

to have been made in the regular course of business of the hospital and for the purpose of assisting it in carrying on that business. Del Toro v Carroll, 33 A.D.2d 160, 306 N.Y.S.2d 95, 1969 N.Y. App. Div. LEXIS 2553 (N.Y. App. Div. 1st Dep't 1969).

Statements in copy of history portion of hospital record to the effect that insured fell off motorcycle were inadmissible in proceeding to determine whether insured was victim of hit-and-run vehicle so as to activate arbitration clause in policy, where no foundation was laid, statements were not germane to diagnosis or treatment of injured and evidence did not establish that insured made statements. Allstate Ins. Co. v Spadaccini, 52 A.D.2d 813, 383 N.Y.S.2d 605, 1976 N.Y. App. Div. LEXIS 12622 (N.Y. App. Div. 1st Dep't 1976).

In an action by a passenger against the driver and the owner-operator of a bus to recover damages for injuries the passenger had received in a traffic accident, it was reversible error to exclude a hospital record which stated that no history of the driver had been obtainable due to his heavy intoxication at the time of his hospitalization. A hospital record which contains a report that a person admitted to the hospital was intoxicated is admissible since such condition is pertinent in connection with diagnosis and treatment of the patient. Campbell v Manhattan & Bronx Surface Transit Operating Authority, 81 A.D.2d 529, 438 N.Y.S.2d 87, 1981 N.Y. App. Div. LEXIS 10994 (N.Y. App. Div. 1st Dep't 1981).

In a personal injuries action, the trial court erred in admitting into evidence a statement contained in plaintiff’s hospital record that she “fell getting out of a cab” since statements contained in a hospital record concerning the cause of an accident are not admissible under CPLR 4518 unless germane to diagnosis or treatment. Edelman v New York, 81 A.D.2d 904, 435 N.Y.S.2d 603, 1981 N.Y. App. Div. LEXIS 11622 (N.Y. App. Div. 2d Dep't 1981).

In a proceeding under Men Hyg Law § 15.35 to determine whether a patient was mentally retarded and in need of further retention at a State developmental center, the trial court erred in admitting the patient’s entire institutional file as a business record pursuant to CPLR § 4518, since, though the file contained recorded conclusions, by physicians and others who had attended to the patient’s needs, that were admissible insofar as they were germane to the

patient’s treatment, and that properly could be utilized by expert witnesses as a basis for their opinions, many of the entries included statements and remarks that had been made by third parties who were under no business duty to report to the entrants and that were not otherwise admissible under any independent exception to the hearsay rule. In re Harry M., 96 A.D.2d 201, 468 N.Y.S.2d 359, 1983 N.Y. App. Div. LEXIS 20318 (N.Y. App. Div. 2d Dep't 1983).

In an action by a husband and wife based on negligence, strict products liability, and breach of warranty, which was commenced in April, 1980, seeking damages against the manufacturer for personal injury allegedly arising from the wife’s use of a “Dalkon Shield” intrauterine device inserted in her in May, 1971, a motion by defendants for summary judgment dismissing the complaint on the ground that the action is barred by the statute of limitations was improperly granted, since the cause of action did not accrue until November, 1978, when plaintiff wife was diagnosed as having a tubo-ovarian abscess believed to have been caused by the “Dalkon Shield;” the wife’s submission of copies of hospital records as evidence of the date of the development of the abscess would be sufficient to defeat the motion for summary judgment, such records indicating that the injury occurred sometime during November, 1978 and being made at the time of treatment of plaintiff wife by medical personnel, including physicians, in the regular course of their duties and without any consideration of future litigation. Davis v A.H. Robins Co., 99 A.D.2d 342, 473 N.Y.S.2d 182, 1984 N.Y. App. Div. LEXIS 16960 (N.Y. App. Div. 1st Dep't 1984).

Uncertified records of methadone maintenance clinic relied upon by insurer as proof of insured’s drug use were hearsay and not competent to support finding as matter of law that insured was drug user. Botway v American International Assurance Co., 151 A.D.2d 288, 543 N.Y.S.2d 651, 1989 N.Y. App. Div. LEXIS 7503 (N.Y. App. Div. 1st Dep't 1989).

In dental malpractice action based on defendant’s negligent failure to prescribe antibiotics during extensive dental work performed on plaintiff, which allegedly caused infection, endocarditis, and ultimate embolus that resulted in stroke, it was error to strike all references to plaintiff’s dental history from hospital records before they were admitted in evidence since origin and type of

infectious bacteria was pertinent to proper diagnosis and treatment of plaintiff's condition. Moran v Demarinis, 152 A.D.2d 546, 543 N.Y.S.2d 480, 1989 N.Y. App. Div. LEXIS 9663 (N.Y. App. Div. 2d Dep't 1989).

Certified copy of plaintiff's hospital record relating to blood alcohol test should have been admitted into evidence on insurer's motion in action brought against insurer for its failure to provide no-fault coverage due to plaintiff's intoxication at time of automobile accident where insurer offered unrebutted testimony that blood test was needed for care and treatment. LaDuke v State Farm Ins. Co., 158 A.D.2d 137, 557 N.Y.S.2d 221, 1990 N.Y. App. Div. LEXIS 9791 (N.Y. App. Div. 4th Dep't 1990).

In action under Dram Shop Act, it was error to admit evidence of handwritten notation on hospital radiology report stating that "The patient (defendant) is drunk," where overwhelming evidence clearly indicated that such notation was not made in regular course of business and that it was not in regular course of such business to make it. Senn v Scudieri, 165 A.D.2d 346, 567 N.Y.S.2d 665, 1991 N.Y. App. Div. LEXIS 3825 (N.Y. App. Div. 1st Dep't 1991).

Court properly allowed introduction of hospital record of dose preparation which was part of plaintiff's medical record prepared by nuclear pharmacist where pharmacist had personal knowledge of dose, he himself performed preparation of substance, and he was under business duty to accurately record doses administered; fact that information concerning dosage was entered by pharmacist into plaintiff's medical record shortly after its administration, rather than before as was usual procedure, merely related to circumstances of record-keeping, not to admissibility of records. Beck v Albany Medical Ctr. Hosp., 191 A.D.2d 854, 594 N.Y.S.2d 844, 1993 N.Y. App. Div. LEXIS 2380 (N.Y. App. Div. 3d Dep't 1993).

Court in medical malpractice action properly redacted certain portions of records from institutions in which plaintiff had been patient by removing mention of diagnosis from those documents where references to diagnoses came from other unknown charts or records and might have been part of history relayed by plaintiff herself or her counsel. Plaintiff was not prejudiced because hospital record, which was in evidence, was redacted after her counsel had

already read diagnosis to jury during summation, and then, when jury asked to see document, it no longer contained that portion, where (1) plaintiff had entered numerous documents into evidence, including documents containing material which was ultimately redacted, (2) parties stipulated that defense need not go through each document at that time, but would be given opportunity to object to any part of any document "if that part is to be read in the presence of the jury," and (3) during summation, plaintiff's counsel never gave defense opportunity to object prior to reading portion in question to jury. Ginsberg by Ginsberg v North Shore Hosp., 213 A.D.2d 592, 624 N.Y.S.2d 257, 1995 N.Y. App. Div. LEXIS 3233 (N.Y. App. Div. 2d Dep't), app. denied, 86 N.Y.2d 701, 631 N.Y.S.2d 605, 655 N.E.2d 702, 1995 N.Y. LEXIS 2710 (N.Y. 1995).

Admission into evidence of transcript of alleged tape recording made by defibrillator machine did not require reversal of jury verdict in favor of defendants in wrongful death action, although transcript should not have been admitted, where plaintiff merely speculated that incriminating remark about absence of oxygen allegedly made by one defendant occurred while recording device was operating and might have been picked up by machine; since there was no reason for jury to believe that remark necessarily would have been recorded, absence of reference to it in transcript did not taint plaintiff's testimony that remark was made. Petrosino v Bravo Volunteer Ambulance Corp., 225 A.D.2d 405, 640 N.Y.S.2d 2, 1996 N.Y. App. Div. LEXIS 2706 (N.Y. App. Div. 1st Dep't 1996).

Court properly denied plaintiff's request that hospital records she was offering in evidence be redacted, so as to excise therefrom information indicating that conditions for which she was treated at those hospitals did not manifest themselves until after her discharge from defendant hospital, since such information was germane to her diagnosis and treatment; plaintiff's objection that records contained no indication of source of such information went to weight, not admissibility, of information. Niles v Patel, 235 A.D.2d 275, 652 N.Y.S.2d 41, 1997 N.Y. App. Div. LEXIS 283 (N.Y. App. Div. 1st Dep't), app. denied, 89 N.Y.2d 814, 659 N.Y.S.2d 855, 681 N.E.2d 1302, 1997 N.Y. LEXIS 804 (N.Y. 1997).

Medical malpractice plaintiffs failed to raise triable issue of fact as to whether patient's return visits to hospital, several months after initial surgery and follow-up visits, were part of continuous course of treatment related to initial surgery, so as to prevent action from being time-barred, where hospital record stating that patient had returned with same problem was not certified and was not in admissible form under CLS CPLR § 4518(c), author of that statement was not identified, and source of statement could have been patient. Jajoute v New York City Health & Hosps. Corp., 242 A.D.2d 674, 662 N.Y.S.2d 786, 1997 N.Y. App. Div. LEXIS 9171 (N.Y. App. Div. 2d Dep't 1997), app. dismissed, 91 N.Y.2d 887, 668 N.Y.S.2d 565, 691 N.E.2d 637, 1998 N.Y. LEXIS 87 (N.Y. 1998).

X-ray report concerning plaintiff's knee injury was properly admitted as certified copy of hospital record, notwithstanding failure to produce original x-rays. Lanpont v Savvas Cab Corp., 244 A.D.2d 208, 664 N.Y.S.2d 285, 1997 N.Y. App. Div. LEXIS 11565 (N.Y. App. Div. 1st Dep't 1997).

In action under CLS Labor § 240(1) for worker's injuries in fall from scaffold, court properly redacted 3 references in hospital record indicating that worker fell from ladder where there was no basis for defendant's speculation that worker was source of such information, and redacted references were not relevant to diagnosis of worker's injuries and treatment, as indicated by defendant's own medical expert, who testified that it was only necessary to know that plaintiff "fell and landed on something hard." Haulotte v Prudential Ins. Co. of Am., 266 A.D.2d 38, 698 N.Y.S.2d 24, 1999 N.Y. App. Div. LEXIS 11386 (N.Y. App. Div. 1st Dep't 1999).

In personal injury action, hospital emergency room record was admissible as business record without redaction of statement that plaintiff had been running immediately before sustaining injury where plaintiff's explanation of how he was hurt might be helpful to understanding of medical aspects of case and was relevant to rendering of medical diagnosis or treatment. Wright v New York City Hous. Auth., 273 A.D.2d 378, 709 N.Y.S.2d 600, 2000 N.Y. App. Div. LEXIS 7066 (N.Y. App. Div. 2d Dep't 2000).

Trial court did not err in admitting in evidence at the fact-finding hearing in a neglect proceeding certain records concerning, inter alia, the father's drug rehabilitation; those records were admissible under the business records exception to the hearsay rule. Matter of Alyshia M.R., 53 A.D.3d 1060, 861 N.Y.S.2d 551, 2008 N.Y. App. Div. LEXIS 5913 (N.Y. App. Div. 4th Dep't), app. denied, 11 N.Y.3d 707, 868 N.Y.S.2d 599, 897 N.E.2d 1083, 2008 N.Y. LEXIS 3264 (N.Y. 2008).

Although entries in hospital records were germane to the decedent's diagnosis and treatment, defendants failed to offer foundational testimony, so the entries were not admissible under the business records exception to the hearsay rule. Grechko v Maimonides Med. Ctr., 175 A.D.3d 1261, 109 N.Y.S.3d 418, 2019 N.Y. App. Div. LEXIS 6474 (N.Y. App. Div. 2d Dep't 2019), vacated, sub. op., 188 A.D.3d 832, 134 N.Y.S.3d 435, 2020 N.Y. App. Div. LEXIS 6749 (N.Y. App. Div. 2d Dep't 2020).

Entries in hospital records were not admissible under the business records exception to the hearsay rule where, although the entries were germane to the decedent's diagnosis and treatment, the record did not reflect that the source of the information in the entries was known and thus, it could not be established whether the source had a duty to make the statement or whether some other hearsay exception applied. Grechko v Maimonides Med. Ctr., 188 A.D.3d 832, 134 N.Y.S.3d 435, 2020 N.Y. App. Div. LEXIS 6749 (N.Y. App. Div. 2d Dep't 2020).

In a plaintiff's lawsuit against a ski resort, seeking damages for injuries the plaintiff allegedly sustained when she fell off a ski lift, the trial court held that although the plaintiff's medical expert could testify about his own examination of the plaintiff, and could rely on certified out-of-court x-rays, bone scan reports, and magnetic resonance imaging reports, the expert could not base his opinions on hospital records or records created by doctors who provided primary treatment that were not admitted into evidence under an independent exception to the rule on hearsay evidence. Hornbrook v Peak Resorts, Inc., 194 Misc. 2d 273, 754 N.Y.S.2d 132, 2002 N.Y. Misc. LEXIS 1064 (N.Y. Sup. Ct. 2002).

Because all of the statements in a hospital's records regarding a patient's mental health were relevant for the hospital to diagnose, treat, and ultimately develop a discharge plan for a patient, they were also admissible under the business record exception to the hearsay rule, N.Y. C.P.L.R. 4518(a), to support an assisted outpatient treatment order under N.Y. Mental Hyg. Law § 9.60. Matter of Dolan (Joan W.), 943 N.Y.S.2d 737, 35 Misc. 3d 781, 2012 N.Y. Misc. LEXIS 1447 (N.Y. Sup. Ct. 2012).

47. —Criminal prosecutions; relevancy of hospital records

References in a victim's medical records to his being "forced to" consume crack cocaine were admissible under the business records exception to the hearsay rule, N.Y. C.P.L.R. 4518(a). They were relevant to his diagnosis and treatment because, under such a scenario, he would not have been in control over either the nature or amount of the substance he ingested. People v Ortega, 15 N.Y.3d 610, 917 N.Y.S.2d 1, 942 N.E.2d 210, 2010 N.Y. LEXIS 3336 (N.Y. 2010).

References in an assault victim's medical records to "domestic violence" and to the existence of a safety plan were admissible under the business records exception to the hearsay rule, as these statements were relevant to the victim's diagnosis and treatment, and domestic violence was part of the attending physician's diagnosis. People v Ortega, 15 N.Y.3d 610, 917 N.Y.S.2d 1, 942 N.E.2d 210, 2010 N.Y. LEXIS 3336 (N.Y. 2010).

As the relationship between defendant and the victim, considering their former relationship and the fact that they were roommates at the time of the assault, was subject to classification as involving domestic violence, it was relevant for purposes of diagnosis and treatment that the victim's assault was at the hands of a former boyfriend. Therefore, references in the victim's medical records to domestic violence were admissible under the business records exception to the hearsay rule. People v Ortega, 15 N.Y.3d 610, 917 N.Y.S.2d 1, 942 N.E.2d 210, 2010 N.Y. LEXIS 3336 (N.Y. 2010).

In a prosecution for second-degree attempted murder, admission of a hospital report stating that the complaining witness was the victim of a gunshot wound was proper, even though the

hospital never found the bullet, where entries made in the hospital record relating to diagnosis or treatment qualified for admission under the statutory business records rule in CPL § 60.10 and CPLR § 4518, in that it is the business of an hospital to diagnose and treat its patients' ailments, where the diagnosis rendered would have been admissible if the attending physician had been called to testify, and where the defendant's objection went to the weight of the diagnosis and not to its admissibility. People v Davis, 95 A.D.2d 837, 463 N.Y.S.2d 876, 1983 N.Y. App. Div. LEXIS 18775 (N.Y. App. Div. 2d Dep't 1983), app. denied, 60 N.Y.2d 965 (N.Y. 1983), app. denied, 64 N.Y.2d 889, 1985 N.Y. LEXIS 19344 (N.Y. 1985).

In prosecution for assault, court erred in refusing to admit certified copy of hospital records showing treatment of defendant where records clearly met statutory test, and court's concern about history portion of records presented no bar to admission since that part could be redacted. People v Egbert, 122 A.D.2d 599, 505 N.Y.S.2d 12, 1986 N.Y. App. Div. LEXIS 59883 (N.Y. App. Div. 4th Dep't), app. denied, 68 N.Y.2d 811, 507 N.Y.S.2d 1029, 499 N.E.2d 878, 1986 N.Y. LEXIS 20265 (N.Y. 1986).

Trial court did not err in admitting in evidence complainant's unredacted hospital records in second degree assault prosecution, pursuant to business records exception to hearsay rule; records, including portion which indicated that complainant had been "hit in face," were relevant to diagnosis and treatment of complainant's injuries. People v Singleton, 140 A.D.2d 388, 527 N.Y.S.2d 867, 1988 N.Y. App. Div. LEXIS 4678 (N.Y. App. Div. 2d Dep't 1988).

Evidence was insufficient to support determination finding juvenile guilty of acts constituting first degree kidnapping where there was no use or threat of deadly physical force during 48-hour episode, juvenile and victim were constantly at homes and in presence of his relatives, none of whom was charged with crime, victim was known to frequent first location (apartment where juvenile lived with his grandmother), and victim remained at second location (home of juvenile's aunt) several days after juvenile left. In re Luis V., 216 A.D.2d 15, 628 N.Y.S.2d 60, 1995 N.Y. App. Div. LEXIS 6040 (N.Y. App. Div. 1st Dep't), app. dismissed, 86 N.Y.2d 838, 634 N.Y.S.2d

446, 658 N.E.2d 224, 1995 N.Y. LEXIS 3628 (N.Y. 1995), app. denied, 87 N.Y.2d 803, 639 N.Y.S.2d 310, 662 N.E.2d 791, 1995 N.Y. LEXIS 4916 (N.Y. 1995).

In prosecution for first and second degree sexual abuse, court properly admitted statement given by victim during her treatment at hospital where statement, contained in hospital record and redacted to delete reference to defendant, provided “[t]he patient states that yesterday [a person] kissed and sucked on her neck and placed his penis between her legs,” since statement was directly relevant to manner in which victim had been injured and prompted doctor to undertake further examination. People v Bailey, 252 A.D.2d 815, 675 N.Y.S.2d 706, 1998 N.Y. App. Div. LEXIS 8592 (N.Y. App. Div. 3d Dep't), app. denied, 92 N.Y.2d 922, 680 N.Y.S.2d 463, 703 N.E.2d 275, 1998 N.Y. LEXIS 3743 (N.Y. 1998).

In regard to defendant’s trial for rape in the third degree and endangering the welfare of a child, the victim’s medical record was properly received in evidence under the business records exception to the hearsay rule in that it was germane to the medical treatment or diagnosis of the victim and a proper foundation was laid, including a statement from a hospital administrator certifying the authenticity and business purpose of the report. People v Kossman, 46 A.D.3d 1104, 848 N.Y.S.2d 401, 2007 N.Y. App. Div. LEXIS 13174 (N.Y. App. Div. 3d Dep't 2007).

In defendant’s prosecution for, inter alia, criminal sexual act in the first degree and attempted assault in the second degree, the victim’s hospital records were properly admitted into evidence under N.Y. C.P.L.R. § 4518(a) as they were relevant to her medical treatment and diagnosis. People v Bruno, 47 A.D.3d 1064, 849 N.Y.S.2d 701, 2008 N.Y. App. Div. LEXIS 297 (N.Y. App. Div. 3d Dep't 2008), app. denied, 10 N.Y.3d 809, 857 N.Y.S.2d 42, 886 N.E.2d 807, 2008 N.Y. LEXIS 1213 (N.Y. 2008).

In third degree assault trial arising from alleged domestic violence, victim’s statements to hospital personnel concerning how injury was inflicted were admissible under “business records” exception to hearsay rule. People v Swinger, 180 Misc. 2d 344, 689 N.Y.S.2d 336, 1998 N.Y. Misc. LEXIS 687 (N.Y. City Crim. Ct. 1998).

Trial court properly admitted a victim's hospital records into evidence during defendant's criminal trial on charges of criminal possession of a weapon in the third degree, coercion in the first degree, unlawful imprisonment in the first degree, menacing in the second degree, and assault in the third degree without redacting a statement that the victim was "kicked, slapped, pulled by her hair, and had a knife to her neck." People v Baltimore, 301 A.D.2d 610, 754 N.Y.S.2d 650, 2003 N.Y. App. Div. LEXIS 465 (N.Y. App. Div. 2d Dep't), app. denied, 100 N.Y.2d 592, 766 N.Y.S.2d 167, 798 N.E.2d 351, 2003 N.Y. LEXIS 3457 (N.Y. 2003).

Trial court's redaction of the hospital psychiatric screening document was proper, given the lack of foundation or relevance, because defendant did not raise an insanity defense. People v Wojes, 306 A.D.2d 754, 763 N.Y.S.2d 103, 2003 N.Y. App. Div. LEXIS 7431 (N.Y. App. Div. 3d Dep't), app. denied, 100 N.Y.2d 600, 766 N.Y.S.2d 176, 798 N.E.2d 360, 2003 N.Y. LEXIS 3676 (N.Y. 2003).

Identity of the victim's abuser had no bearing on his diagnosis and the ensuing course of medical treatment to be provided to the victim by the nurse or the other health care workers; thus, the inmate failed to meet the requirement that the evidence in the medical records be germane to the victim's diagnosis and treatment. The inmate did not demonstrate that there was an error of New York state evidentiary rules, much less an error of federal constitutional magnitude. Howard v McGinnis, 632 F. Supp. 2d 253, 2009 U.S. Dist. LEXIS 59768 (W.D.N.Y. 2009).

48. —Effect of death of hospital patient

Admission into evidence, over objection, that portion of a hospital record entitled "History taken post-mortem" constituted prejudicial error even though a recorded post-mortem statement, if accurate, might prove of value in the diagnosis and treatment of future patients, such statement not being germane to diagnosis and treatment of one already deceased, and it does not qualify under the statutory exception to the hearsay rule which permits hospital records into evidence.

Osleeb v Block, 36 A.D.2d 605, 318 N.Y.S.2d 601, 1971 N.Y. App. Div. LEXIS 4617 (N.Y. App. Div. 1st Dep't 1971).

In wrongful death action brought by widow of deceased psychiatric patient against hospital, notation on hospital record made by doctors under “Final Diagnosis,” stating “Death by suicide after elopement from hospital,” was admissible. Lichtenstein v Montefiore Hospital & Medical Center, 56 A.D.2d 281, 392 N.Y.S.2d 18, 1977 N.Y. App. Div. LEXIS 10430 (N.Y. App. Div. 1st Dep't 1977).

Insurer should have been granted summary judgment dismissing action to collect on life insurance policy brought by estate of insured’s husband where it was uncontradicted that insured materially misrepresented her history of substance abuse; hospital records, which reflected her statements to doctors as to time periods when her substance abuse problem existed, were admissible under CLS CPLR § 4518(c) as relevant to her diagnosis and treatment. Mullen v Independence Sav. Bank, 267 A.D.2d 169, 700 N.Y.S.2d 447, 1999 N.Y. App. Div. LEXIS 13360 (N.Y. App. Div. 1st Dep't 1999).

Blood-type of decedent as shown on hospital records as well as medical center blood-type of female who purportedly gave birth to contestant were admissible in probate proceedings for purpose of determining whether contestant was in fact decedent’s child since the blood-type was either necessary for or part of the treatment accorded the patient; furthermore, decedent’s history, as set forth in hospital record, was admissible since it was necessary for decedent’s treatment. Will of T., 86 Misc. 2d 452, 382 N.Y.S.2d 916, 1976 N.Y. Misc. LEXIS 2467 (N.Y. Sur. Ct. 1976).

49. Independent testimony of third parties

CPLR 4518 does not make admissible voluntary hearsay statements by third persons not employed by the hospital or under any duty in relation to the hospital or its business. Del Toro v Carroll, 33 A.D.2d 160, 306 N.Y.S.2d 95, 1969 N.Y. App. Div. LEXIS 2553 (N.Y. App. Div. 1st Dep't 1969).

In a negligence action to recover damages for personal and property injuries, pertinent portions of hospital records were admissible without resort to independent testimony, as business records. Dana v Von Pichl, 39 A.D.2d 744, 332 N.Y.S.2d 368, 1972 N.Y. App. Div. LEXIS 4609 (N.Y. App. Div. 2d Dep't 1972).

Hospital records relating to plaintiff as patient should have borne certification or authorization of the hospital or have been qualified by witness as evidence admissible in personal injury suit under the class of entries made in the regular course of business. Nelson v X-Ray Sys., 46 A.D.2d 995, 361 N.Y.S.2d 468, 1974 N.Y. App. Div. LEXIS 3485 (N.Y. App. Div. 4th Dep't 1974).

Where person or persons who made entries in state hospital records reflecting statements made by patient as to an assault by hospital employee did not witness the incident in question, and patient who furnished the information was under no business duty to do so, no hearsay exception was applicable to the information furnished to the entrant and the records were inadmissible. Hayes v State, 50 A.D.2d 693, 376 N.Y.S.2d 647, 1975 N.Y. App. Div. LEXIS 12543 (N.Y. App. Div. 3d Dep't 1975), aff'd, 40 N.Y.2d 1044, 392 N.Y.S.2d 282, 360 N.E.2d 959, 1976 N.Y. LEXIS 3230 (N.Y. 1976).

In action against county arising from one-car accident allegedly caused by improper maintenance of highway, wherein county asserted that accident was caused, at least in part, by plaintiff’s intoxication, plaintiff’s unredacted hospital record, which contained blood alcohol test result and statement by plaintiff that she had 3 drinks before accident, was admissible under CLS CPLR § 4518(c) without regard to laying foundation for admission of blood alcohol test result. Maxcy v County of Putnam, 178 A.D.2d 729, 576 N.Y.S.2d 959, 1991 N.Y. App. Div. LEXIS 16052 (N.Y. App. Div. 3d Dep't 1991), app. dismissed, 80 N.Y.2d 826, 587 N.Y.S.2d 908, 600 N.E.2d 635, 1992 N.Y. LEXIS 1726 (N.Y. 1992).

In medical malpractice action, court properly refused to allow defense witness, on cross-examination, to read into record part of hospital record where court allowed some questioning of witness regarding matters in record of hospital at which she was not employed but curtailed that questioning when it became clear that it was beyond scope of direct examination. Holmes v

Weissman, 251 A.D.2d 1078, 674 N.Y.S.2d 215, 1998 N.Y. App. Div. LEXIS 7189 (N.Y. App. Div. 4th Dep't 1998).

In action for malpractice arising out of conduct of veterinarian employed by State Racing and Wagering Board, medical records and X-rays taken at veterinary hospital were admissible under CLS CPLR § 4518(a) as business records, and (since veterinary hospital qualifies as “hospital” under CLS CPLR §§ 2306, 4518(c)) records, including X-rays, were admissible without any further foundation. Restrepo v State, 146 Misc. 2d 349, 550 N.Y.S.2d 536, 1989 N.Y. Misc. LEXIS 845 (N.Y. Ct. Cl. 1989), aff'd, 179 A.D.2d 804, 580 N.Y.S.2d 874, 1992 N.Y. App. Div. LEXIS 913 (N.Y. App. Div. 2d Dep't 1992).

50. Security measures at hospital

Although the hospital record of a blood test performed after plaintiff’s accident is admissible under CPLR 4518 as a business record, the hospital record in and of itself is insufficient to prove that plaintiff was operating a motor vehicle in an intoxicated condition within the meaning of section 1192 of the Vehicle and Traffic Law and thus ineligible to receive no-fault benefits (Insurance Law, § 672, subd 2, par [b]) since said hospital blood test was submitted without establishing who drew the blood sample in the emergency room, at whose request this was done and without any evidence that proper procedures were followed in the extraction, identification and preservation of the specimen as is required by subdivision 7 of section 1194 of the Vehicle and Traffic Law, which sets the standards for the introduction of blood tests to establish intoxication. With the test aside, evidence that plaintiff might have drunk five glasses of beer during the afternoon and an additional three beers during the early evening hours prior to the accident, is insufficient in and of itself to prove that plaintiff was operating a motor vehicle in an intoxicated condition. Chess v Colonial Penn Ins. Co., 93 Misc. 2d 765, 403 N.Y.S.2d 955, 1977 N.Y. Misc. LEXIS 2671 (N.Y. Sup. Ct. 1977), aff'd, 64 A.D.2d 875, 1978 N.Y. App. Div. LEXIS 16806 (N.Y. App. Div. 4th Dep't 1978).

51. Substance abuse noted on hospital records

In a negligence action, the admission into evidence of a card containing a notation that plaintiff was “drunk” was erroneous in view of the fact that no proof was offered to show who had made the entry, whether he was under a duty to do so, what the source of the information was, and whether the entry was made in the regular course of business of the hospital. Ward v Thistleton, 32 A.D.2d 846, 302 N.Y.S.2d 339, 1969 N.Y. App. Div. LEXIS 3565 (N.Y. App. Div. 2d Dep't 1969).

In action to recover for injuries sustained while riding amusement ride, it was error to admit hospital record which stated that plaintiff was intoxicated since, even if intoxication were relevant to diagnosis and treatment, statement was not admissible under business record exception to hearsay rule as there was no indication regarding source of information. Mercedes v Amusements of America, 160 A.D.2d 630, 559 N.Y.S.2d 252, 1990 N.Y. App. Div. LEXIS 4758 (N.Y. App. Div. 1st Dep't 1990).

Complete hospital record of pedestrian hit by car, including portion setting forth his blood alcohol level, should have been admitted in his action against motorist, but redaction of record was harmless in absence of evidence that his alleged intoxication caused or contributed to accident. Martin v City of New York, 275 A.D.2d 351, 712 N.Y.S.2d 169, 2000 N.Y. App. Div. LEXIS 8698 (N.Y. App. Div. 2d Dep't 2000).

Hospital records as to the addiction of the mother to heroin were admissible in a proceeding for the removal of the child from her custody because of such addiction, inasmuch as all confidentiality in the doctor-patient relationship had been by law removed when the evidence related to or could be connected to child abuse. In re John Children, 61 Misc. 2d 347, 306 N.Y.S.2d 797, 1969 N.Y. Misc. LEXIS 995 (N.Y. Fam. Ct. 1969).

Hospital record containing statement from plaintiff’s son to emergency room physician that plaintiff “drank heavy” prior to admission for severe bleeding was admissible in medical negligence action based on failure to take plaintiff off or reduce dosage of anticoagulants for

phlebitis, since son had filial duty to relate information to physician, physician had duty to record information, and trustworthiness of son’s statement was unquestionable under circumstances. Feinstein v Goebel, 144 Misc. 2d 462, 544 N.Y.S.2d 968, 1989 N.Y. Misc. LEXIS 492 (N.Y. Sup. Ct. 1989).

C. Medical Test Results

52. Generally

In prosecution for third degree sale of controlled substance, laboratory notes of chemist who conducted tests on substances sold were admissible under business records exception to hearsay rule, and defendant’s constitutional right of confrontation was not violated, even though chemist who took notes did not testify, where another chemist who worked with first chemist and was familiar with her work did testify, and defendant had opportunity to cross-examine her. People v Driscoll, 251 A.D.2d 759, 675 N.Y.S.2d 151, 1998 N.Y. App. Div. LEXIS 6753 (N.Y. App. Div. 3d Dep't), app. denied, 92 N.Y.2d 896, 680 N.Y.S.2d 60, 702 N.E.2d 845, 1998 N.Y. LEXIS 3359 (N.Y. 1998), app. denied, 92 N.Y.2d 949, 681 N.Y.S.2d 479, 704 N.E.2d 232, 1998 N.Y. LEXIS 4176 (N.Y. 1998).

Laboratory report relating to drugs recovered from defendant was properly admitted as business record in prosecution for third degree sale and third degree possession of controlled substance. People v Taam, 260 A.D.2d 261, 689 N.Y.S.2d 445, 1999 N.Y. App. Div. LEXIS 4182 (N.Y. App. Div. 1st Dep't), app. denied, 93 N.Y.2d 1046, 697 N.Y.S.2d 878, 720 N.E.2d 98, 1999 N.Y. LEXIS 3563 (N.Y. 1999).

In prosecution for third degree possession of controlled substance, laboratory report relating to part of drugs recovered from defendant was admissible as business record, and defendant’s right of confrontation was not abridged, even though foundation for admission of report was laid through testimony of chemist who did not personally test that part of drugs, where (1) chemist-witness, in addition to laying standard foundation for receipt of absent chemist’s report as

business record, testified that absent chemist performed battery of tests “just like” those performed, and described at length, by witness, who tested main part of drugs, and (2) confrontation of absent chemist would have had little or no utility, because witness was subject to cross-examination as to all relevant matters concerning reliability of tests, which did not vary from chemist to chemist, and it was unlikely that chemist would remember any particular piece of evidence tested. People v Atkins, 273 A.D.2d 11, 709 N.Y.S.2d 39, 2000 N.Y. App. Div. LEXIS 6103 (N.Y. App. Div. 1st Dep't), app. denied, 95 N.Y.2d 960, 722 N.Y.S.2d 477, 745 N.E.2d 397, 2000 N.Y. LEXIS 4175 (N.Y. 2000).

In defendant's trial on charges involving the sale and possession of a controlled substance, the trial court did not abuse its discretion by concluding that a lab technician's statement that another scientist had not found any discrepancies when her test results were reviewed was not hearsay because that fact was included in admissible business records. People v Wynn, 149 A.D.3d 1252, 52 N.Y.S.3d 136, 2017 N.Y. App. Div. LEXIS 2781 (N.Y. App. Div. 3d Dep't 2017), app. denied, 29 N.Y.3d 1123, 86 N.E.3d 565, 64 N.Y.S.3d 673, 2017 N.Y. LEXIS 2752 (N.Y. 2017), app. denied, 29 N.Y.3d 1136, 86 N.E.3d 578, 64 N.Y.S.3d 686, 2017 N.Y. LEXIS 2950 (N.Y. 2017), app. denied, 29 N.Y.3d 1129, 86 N.E.3d 571, 64 N.Y.S.3d 679, 2017 N.Y. LEXIS 2976 (N.Y. 2017), app. denied, 32 N.Y.3d 1126, 117 N.E.3d 823, 93 N.Y.S.3d 264, 2018 N.Y. LEXIS 3801 (N.Y. 2018), app. denied, 32 N.Y.3d 1124, 117 N.E.3d 821, 93 N.Y.S.3d 262, 2018 N.Y. LEXIS 3838 (N.Y. 2018).

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 of bureau of municipal corporation and the exception for certificates of public officers. Official reports of drug analyses are admissible without the testimony of the analyst. In re G., 80 Misc. 2d 517, 363 N.Y.S.2d 999, 1975 N.Y. Misc. LEXIS 2206 (N.Y. Fam. Ct. 1975).

53. Blood tests

In prosecution for driving while intoxicated, chemist's records were admissible not only to establish that he performed test on accused's blood sample but also to establish accuracy of test. Though admission, under business entry exception to hearsay rule, of records of chemist, who analyzed accused's blood sample, impaired accused's rights of confrontation and cross-examination in prosecution of driving while intoxicated, it did not violate his constitutional rights in those respects. Testimony by son of chemist, who analyzed accused's blood sample and who died while trial was in progress, that chemist had performed several hundred blood tests, that he kept log of every test and placed check mark next to each entry as payment for services was received, that such son, who was also co-employee of chemist, had observed at least a dozen tests and it was chemist's practice to record results of test immediately on completion thereof, established adequate foundation to qualify chemist's records as a business entry exception to hearsay rule. People v Porter, 46 A.D.2d 307, 362 N.Y.S.2d 249, 1974 N.Y. App. Div. LEXIS 3229 (N.Y. App. Div. 3d Dep't 1974).

It was improper for Workmen's Compensation Board to receive in evidence copy of police laboratory report of blood-alcohol content of deceased employee, who was killed in fatal automobile accident while operating station wagon owned by his employer, which report stated that blood sample had been obtained by coroner pursuant to statute mandating coroner to make quantitative tests for alcohol on bodies of certain individuals killed in motor vehicle accident, in light of further provision of said statute that such results were to be used only for purpose of compiling statistical data and were not to be admitted into evidence or otherwise disclosed in any legal action or proceeding; nor was lab report admissible under business records statute. Rourke v Carl's Drug Co., 56 A.D.2d 202, 392 N.Y.S.2d 498, 1977 N.Y. App. Div. LEXIS 10046 (N.Y. App. Div. 3d Dep't 1977).

By 1983 amendment to CPLR § 4518, blood test may be certified to by head of laboratory or by employee to whom responsibility is delegated; accordingly, in paternity action, HLA blood test should be admitted where authenticated by person designated by laboratory. Commissioner of

Social Services on behalf of Cannon v Richardson, 112 A.D.2d 760, 492 N.Y.S.2d 261, 1985 N.Y. App. Div. LEXIS 56133 (N.Y. App. Div. 4th Dep't 1985).

In paternity proceeding, Family Court properly admitted results of human leukocyte antigen test where mother produced witness who testified with personal knowledge that test was prepared and kept in regular course of business of testing laboratory. Stacie O. v Luciano B., 122 A.D.2d 881, 506 N.Y.S.2d 1, 1986 N.Y. App. Div. LEXIS 59367 (N.Y. App. Div. 2d Dep't 1986), app. dismissed, 69 N.Y.2d 805, 513 N.Y.S.2d 387, 505 N.E.2d 952, 1987 N.Y. LEXIS 15403 (N.Y. 1987).

In filiation proceeding brought by mother, blood genetic marker test ordered by Department of Social Services, as petitioner in prior proceeding against putative father which had been dismissed without prejudice, was admissible under CLS Family Ct Act § 532 where report was certified, as required by CLS CPLR § 4518. Adams v Brant, 130 A.D.2d 957, 516 N.Y.S.2d 147, 1987 N.Y. App. Div. LEXIS 46939 (N.Y. App. Div. 4th Dep't 1987).

Results of court-ordered HLA and genetic marker tests were admissible in evidence at paternity proceeding through written certification of director of laboratory that conducted tests, and it was unnecessary to procure testimony of physician who did testing to lay foundation. Menaldino on behalf of Aletha TT. v Mark UU., 141 A.D.2d 265, 535 N.Y.S.2d 456, 1988 N.Y. App. Div. LEXIS 10897 (N.Y. App. Div. 3d Dep't 1988).

Human leucocyte antigen tests are admissible in evidence as records kept in regular course of business, but meaning and accuracy of test result is subject to challenge by expert testimony. Tamara B. v Pete F., 146 A.D.2d 487, 536 N.Y.S.2d 767, 1989 N.Y. App. Div. LEXIS 82 (N.Y. App. Div. 1st Dep't 1989), amended, 157 A.D.2d 636, 551 N.Y.S.2d 781, 1990 N.Y. App. Div. LEXIS 979 (N.Y. App. Div. 1st Dep't 1990).

Human leucocyte antigen test results of another man (who was alleged by putative father to have had sexual relations with mother) were properly admitted into evidence, even though test was not court-ordered and proof of chain of command was not properly established, since test

was properly certified pursuant to CLS CPLR § 4518(c); under circumstances, no other foundational requirements were necessary. Westchester County Dep't of Social Servs. ex rel. Rosa B. v Jose C., 204 A.D.2d 795, 611 N.Y.S.2d 704, 1994 N.Y. App. Div. LEXIS 4690 (N.Y. App. Div. 3d Dep't 1994).

Family Court properly admitted results of human leucocyte antigen tests, even though biomedical laboratory where tests were conducted was private agency, as opposed to governmental agency, since certification under CLS CPLR § 4518(c) submitted to Family Court stated that laboratory "is a laboratory duly approved to perform blood genetic market tests by the New York State Commissioner of Health," and results were properly certified by physician delegate of laboratory in accordance with CLS Family Ct Act § 532(a) and CLS CPLR § 4518(c) and (d). Vicki W. v Michael X., 235 A.D.2d 870, 652 N.Y.S.2d 669, 1997 N.Y. App. Div. LEXIS 579 (N.Y. App. Div. 3d Dep't 1997).

In personal injury action arising out of motor vehicle accident in which defendant alleged that proximate cause of accident was plaintiff driver's intoxication, court erred in denying admission of blood test of plaintiff which indicated blood alcohol level of .114 as (1) testimony of attending physician in emergency room where plaintiff was seen after accident supported conclusion that hospital record was properly certified and test results were admissible, and (2) reliability of blood alcohol entry co-signed by attending physician was not impeached by lack of laboratory slip concerning subject blood test, or by result of second blood test conducted many hours later which indicated normal blood alcohol content. Rodriguez v Triborough Bridge & Tunnel Auth., 276 A.D.2d 769, 716 N.Y.S.2d 24, 2000 N.Y. App. Div. LEXIS 10924 (N.Y. App. Div. 2d Dep't 2000), app. dismissed, 96 N.Y.2d 814, 727 N.Y.S.2d 694, 751 N.E.2d 942, 2001 N.Y. LEXIS 987 (N.Y. 2001).

While blood alcohol test results for an assignor of no-fault medical benefits were prima facie evidence of intoxication, although they were not certified as required by N.Y. C.P.L.R. § 4518(c), an insurer's cross-motion for summary judgment based on the statutory exclusion for intoxication under N.Y. Ins. Law § 5103(b)(2) should have been denied as no prima facie

showing was made that the alleged intoxication was the proximate cause of the assignor's accident. Westchester Med. Ctr. v Progressive Cas. Ins. Co., 51 A.D.3d 1014, 858 N.Y.S.2d 754, 2008 N.Y. App. Div. LEXIS 4559 (N.Y. App. Div. 2d Dep't 2008).

Although the hospital record of a blood test performed after plaintiff's accident is admissible under CPLR 4518 as a business record, the hospital record in and of itself is insufficient to prove that plaintiff was operating a motor vehicle in an intoxicated condition within the meaning of section 1192 of the Vehicle and Traffic Law and thus ineligible to receive no-fault benefits (Insurance Law, § 672, subd 2, par [b]) since said hospital blood test was submitted without establishing who drew the blood sample in the emergency room, at whose request this was done and without any evidence that proper procedures were followed in the extraction, identification and preservation of the specimen as is required by subdivision 7 of section 1194 of the Vehicle and Traffic Law, which sets the standards for the introduction of blood tests to establish intoxication. With the test aside, evidence that plaintiff might have drunk five glasses of beer during the afternoon and an additional three beers during the early evening hours prior to the accident, is insufficient in and of itself to prove that plaintiff was operating a motor vehicle in an intoxicated condition. Chess v Colonial Penn Ins. Co., 93 Misc. 2d 765, 403 N.Y.S.2d 955, 1977 N.Y. Misc. LEXIS 2671 (N.Y. Sup. Ct. 1977), aff'd, 64 A.D.2d 875, 1978 N.Y. App. Div. LEXIS 16806 (N.Y. App. Div. 4th Dep't 1978).

In a filiation proceeding, the petition would be dismissed where the results of a human leukocyte antigen test were inadmissible in laboratory report form pursuant to Fam Ct Act § 532, where a proper foundation for admission of the report in that form was not laid in order to satisfy the business exception to the hearsay rule under CPLR § 4518, and where the petitioner's testimony and remaining determinative evidence did not meet the burden of proof required in a paternity proceeding. Rosemary W. v Bruce A., 113 Misc. 2d 745, 449 N.Y.S.2d 886, 1982 N.Y. Misc. LEXIS 3373 (N.Y. Fam. Ct. 1982).

Although HLA blood test results are admissible in paternity proceedings as prima facie evidence of the facts contained therein if properly certified and authenticated, an HLA test report still

cannot be admitted into evidence without a proper foundation for its introduction since a respondent has the right to ascertain how the statistical premises which are used to calculate the index of paternity are arrived at and since CPLR § 4518 does not presently authorize either the physician or laboratory that performed the test to certify or authenticate the test results, the test results cannot be admitted into evidence without the person who made the report present in court to qualify it. Results of HLA tests fall outside the ambit of matters that may be judicially noticed since, although the court can take judicial notice of the scientific principles underlying HLA testing, the results of a particular test cannot be deemed of unquestioned accuracy so as to be judicially noticed. M. v S., 115 Misc. 2d 922, 455 N.Y.S.2d 48, 1982 N.Y. Misc. LEXIS 3792 (N.Y. Fam. Ct. 1982).

In a filiation proceeding, the Department of Social Services would not be compelled to produced the doctor who signed a human leucocyte antigen (HLA) blood test report in order to have the report admitted into evidence as prima facie evidence of the facts it contained, pursuant to CPLR § 4518(c). Cynthia H. v James H., 117 Misc. 2d 474, 458 N.Y.S.2d 490, 1983 N.Y. Misc. LEXIS 3172 (N.Y. Fam. Ct. 1983).

The results of a human leucocyte antigen blood test, independently obtained by the wife, would not be admitted into evidence as a business record under CPLR § 4518(c) to rebut the husband’s pendente lite application for visitation since, although the test results were not per se inadmissible simply because the test was conducted without a court order, they were irrelevant and immaterial in that they would not logically tend to prove or disprove any of the principal facts in issue, and the apparent sole purpose of offering the test results was to support the wife’s attempt to disprove the husband’s paternity and to obtain a declaration that the infant was illegitimate, the proper vehicle for which would be a declaratory judgment action in which the child, whose rights must be paramount, would be made a party and would have a guardian ad litem appointed to protect his interests. Lory v Lory, 119 Misc. 2d 205, 462 N.Y.S.2d 744, 1983 N.Y. Misc. LEXIS 3488 (N.Y. Sup. Ct. 1983).

The fact that a human leukocyte antigen blood test was undergone by the parties voluntarily, rather than pursuant to court order, prior to the commencement of their divorce action, to determine the paternity of a child conceived at a time when the parties were not living together and the wife was engaging in sexual relations with another man, would not bar the admissibility of the test results in the divorce action to exclude plaintiff as the father of the child for purposes of child support, since the admissibility issue would be governed by the rules relating to the admissibility of business and medical records pursuant to CPLR § 4518, and the test was reliable, complete, competently administered, and thus unquestionably admissible. Salicco v Salicco, 125 Misc. 2d 137, 479 N.Y.S.2d 313, 1984 N.Y. Misc. LEXIS 3381 (N.Y. Sup. Ct. 1984).

Reversal of rape conviction was mandated by trial court’s admission of alleged victim’s blood alcohol test results to show inability to consent, because the results had been gathered by the prosecution in anticipation of litigation and yet the preparer of the report was not available for cross-examination; the victim’s hospital records, as well as a nurse’s testimony that the victim’s injuries were consistent with forcible rape, on the other hand, were properly admitted as business records and because of the nurse’s expert experience, and would be allowed at retrial. People v Rogers, 8 A.D.3d 888, 780 N.Y.S.2d 393, 2004 N.Y. App. Div. LEXIS 8851 (N.Y. App. Div. 3d Dep't 2004).

54. Breathalyzer

In prosecutions for operating motor vehicle while under the influence of alcohol, trial court committed reversible error in admitting into evidence certain certificates offered by prosecution to show, by way of foundation for introduction of results of breathalyzer tests, that particular breathalyzer equipment utilized was in proper working order and that ampoules used contained properly compounded chemicals, in view of fact that source of certificates was not represented or shown to have been records made in the regular course of business of public agency and private corporations from which they came. While there must be some foundation for introduction of breathalyzer evidence, in view of fact that breathalyzer equipment and

procedures had become familiar and their uses now commonplace and in view of facts that reliability has been demonstrated and results of such testing where properly performed are universally accepted, there may now appropriately be some relaxation of rigorous prerequisites properly required to authenticate reliability of scientific equipment and procedures where they are first employed. People v Gower, 42 N.Y.2d 117, 397 N.Y.S.2d 368, 366 N.E.2d 69, 1977 N.Y. LEXIS 2160 (N.Y. 1977).

Admission in evidence of breathalyzer logs over objection that it had not been shown that entries in logs were made at time of acts recorded in them or within reasonable time thereafter was error, since CLS CPLR § 4518 expressly requires such foundation evidence; admission of logs could not be upheld on basis of certification of police clerk that they constituted true copy of report made by breathalyzer technician, nor by officer's testimony that instrument was functioning properly, since there must be proper foundation testimony or proper certificate to establish that instrument used in test, and ampoules used with it, had been tested within reasonable period in relation to defendant's breath test, and found to be properly calibrated and in working order. People v Mertz, 68 N.Y.2d 136, 506 N.Y.S.2d 290, 497 N.E.2d 657, 1986 N.Y. LEXIS 19392 (N.Y. 1986).

Records of breathalyzer tests were admissible in evidence under business records exception to hearsay rule (CLS CPLR § 4518) where recordation of calibration tests on breathalyzer occurred 7 days after tests were performed, and recordation of simulator solution tests occurred on same day tests were performed. Where "certification or authentication" replaces testimony of live witness, pursuant to CLS CPLR § 4518(c), it must state that documents which it authenticates were produced in normal course of business at or near time that act, transaction, occurrence or event recorded in those documents occurred, but authenticating certificate itself need not be dated or produced at or near date of act, transaction, occurrence or event; accordingly, fact that authenticating certificates were dated from 8 to 36 days after tests were performed on breathalyzer and simulator solution was irrelevant to determining admissibility of test records

under business records exception to hearsay rule. People v Kinne, 71 N.Y.2d 879, 527 N.Y.S.2d 754, 522 N.E.2d 1052, 1988 N.Y. LEXIS 205 (N.Y. 1988).

In criminal matters, scientific reliability and accuracy of breathalyzer machine measuring blood alcohol content for forensic purposes must be established before such test results may be admitted in evidence; test results are not admissible per se under business records exception to hearsay rule, even if performed by regular personnel. People v Campbell, 73 N.Y.2d 481, 541 N.Y.S.2d 756, 539 N.E.2d 584, 1989 N.Y. LEXIS 484 (N.Y. 1989).

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 business records exception to hearsay rule, under CLS CPLR § 4518, where lapse of time between date of certificate and date of performance of test ranged up to 7 months, far beyond requirement of “reasonable” time in § 4518. 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).

In drunk driving prosecution, breathalyzer test results were properly received in evidence as business records under CLS CPLR § 4518 where certificates of ampoule analysis and simulator solution both stated that original records were made at time of each test or within reasonable period of time thereafter. People v McDonough, 132 A.D.2d 997, 518 N.Y.S.2d 524, 1987 N.Y. App. Div. LEXIS 49471 (N.Y. App. Div. 4th Dep't), app. denied, 70 N.Y.2d 801, 522 N.Y.S.2d 119, 516 N.E.2d 1232, 1987 N.Y. LEXIS 19497 (N.Y. 1987).

In prosecution for driving while intoxicated, breathalyzer machine was proved to have been functioning properly when defendant’s test was administered where test was given by person certified by health department as breathalyzer operator, machine used on defendant was tested and found to be functioning properly 2 months before defendant’s test, machine also passed test using certified simulator solution immediately after defendant’s test, and series of weekly tests regularly performed on machine indicated that it was working properly 3 days before and 4 days after defendant’s test. People v Sawinski, 246 A.D.2d 689, 667 N.Y.S.2d 472, 1998 N.Y. App. Div. LEXIS 106 (N.Y. App. Div. 3d Dep't), app. denied, 91 N.Y.2d 930, 670 N.Y.S.2d 412, 693 N.E.2d 759, 1998 N.Y. LEXIS 826 (N.Y. 1998).

In prosecution for driving while intoxicated as felony, certified record of analysis for breathalyzer ampoules from New York State Police Crime Laboratory, which identified catalyst used as silver, rather than silver nitrate, was properly admitted in evidence as business record under CLS CPLR § 4518(a). People v Dailey, 260 A.D.2d 81, 700 N.Y.S.2d 307, 1999 N.Y. App. Div. LEXIS 11923 (N.Y. App. Div. 4th Dep't), app. denied, 94 N.Y.2d 821, 702 N.Y.S.2d 591, 724 N.E.2d 383, 1999 N.Y. LEXIS 4116 (N.Y. 1999).

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 are inadmissible under the business records exception to the hearsay rule since no witness from the agency that tested the breathalyzer testified that the records were made in the regular course of business, since declarations contained in original certifications that the records were made in the regular course of business are self-serving and would allow the declarant to determine admissibility, thereby compounding the hearsay and circumventing the subpoena requirement of CPLR 4518 (subd [c]), and since the records were not produced in response to a subpoena pursuant to CPLR 2307 which is a requirement for the admissibility of certified documents under CPLR 4518 (subd [c]). 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 a prosecution for driving while under the influence of alcohol and driving while intoxicated, the court sustained defendant's objection to the receipt in evidence of records of breathalyzer test results where, although the certification stated that the records were business records kept in the ordinary course of business, it did not state that it was in the regular course of business to make them, at the time of the test, or within a reasonable time thereafter and there was a variance of between three days and nine months from the date of the test to the date of the authenticating certificates. People v Freeland, 118 Misc. 2d 486, 460 N.Y.S.2d 907, 1983 N.Y. Misc. LEXIS 3342 (N.Y. County Ct. 1983).

Results of a breath test administered to defendant on an intoxilyzer, a breath-testing device measuring the absorption of infrared energy by alcohol in the breath sample, was properly admitted into evidence in defendant's trial for driving while intoxicated, even though the "certification of calibration" prepared by the Division of Criminal Justice Services, Bureau for Municipal Police, did not qualify for admission as a business record under CPLR § 4518 due to the failure to assert that it was the regular course of business of the Bureau for Municipal Police "to make" the record, since evidence of a weekly test performed upon the intoxilyzer by a local law enforcement agency and a test for accuracy performed immediately following the administration of the test to defendant established that the instrument was in proper working order so as to permit the admission of the test results. People v Drumm, 122 Misc. 2d 1051, 472 N.Y.S.2d 989, 1984 N.Y. Misc. LEXIS 2953 (N.Y. County Ct. 1984).

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).

In prosecution for driving while intoxicated, breathalyzer test result was not inadmissible because, of 4 chemicals reflected in record of analysis breathalyzer ampoules, one was identified as “silver” rather than “silver nitrate”; it is unclear what effect use of silver rather than silver nitrate as catalyst may have on breathalyzer test result, and thus issue goes to weight of evidence, not admissibility of documents regarding breathalyzer under CLS CPLR § 4518(a) and (c). People v Cali, 172 Misc. 2d 366, 660 N.Y.S.2d 282, 1997 N.Y. Misc. LEXIS 210 (N.Y. County Ct. 1997).

In prosecution for driving while intoxicated, fact that certification of record of analysis of simulator solution incorrectly stated that test was performed on October 29, instead of October 25, did not per se vitiate authentication of document where mistake was due to scrivener’s error, Fact that record of analysis for breathalyzer ampoules indicated that silver rather than silver nitrate was used as catalyst was not controlling factor on admissibility of breathalyzer test result; effect of using improper chemical (silver) was question to be determined by trier of fact. People v Husted, 179 Misc. 2d 606, 686 N.Y.S.2d 544, 1998 N.Y. Misc. LEXIS 677 (N.Y. App. Term 1998).

Because records of tests conducted on police equipment used to test defendant for sobriety were not testimonial in nature, were properly certified, and met all the requirements of business records pursuant to N.Y. C.P.L.R. 4518, the records were admitted into evidence against defendant in his trial for driving a motor vehicle while impaired by alcohol, as was all testimony concerning the records; without violating defendant’s Sixth Amendment right to confrontation. People v Kanhai, 797 N.Y.S.2d 870, 8 Misc. 3d 447, 233 N.Y.L.J. 96, 2005 N.Y. Misc. LEXIS 945 (N.Y. City Crim. Ct. 2005).

Since calibration and certification of a breathalyzer machine occurred in the normal course of governmental business and the test were in fact completed and the results recorded before defendant’s drunk driving arrest, the records qualified as business records under N.Y. C.P.L.R.

4518 and were not testimonial under Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004); therefore, the results were admissible at defendant's trial, and adequately proved blood alcohol above permitted limits, without any requirement that the persons who conducted the calibration and certification be available for cross-examination. People v Krueger, 804 N.Y.S.2d 908, 9 Misc. 3d 950, 2005 N.Y. Misc. LEXIS 1985 (N.Y. J. Ct. 2005).

Tests of accuracy of breathalyzer machines and conformity of reference solutions with consistent standards were performed for regular maintenance purposes and not solely in anticipation of drunk driving prosecutions; therefore, their introduction as foundational evidence for breathalyzer test results did not offend defendants' confrontation rights, even though the testers were not available for cross-examination. Green v DeMarco, 812 N.Y.S.2d 772, 11 Misc. 3d 451, 2005 N.Y. Misc. LEXIS 2776 (N.Y. Sup. Ct. 2005).

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 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).

In a driving while intoxicated case, the trial court properly admitted, pursuant to the business records exception to the hearsay rule, electronic records relating to the calibration and maintenance of the breath testing device, because a proper foundation was laid and the court took into consideration the manner by the records were stored, maintained, or retrieved. People v Rath, 975 N.Y.S.2d 567, 41 Misc. 3d 869, 2013 N.Y. Misc. LEXIS 4249 (N.Y. Dist. Ct. 2013).

Intoxilyzer calibration and solution testing certifications were precluded absent live testimony because those records were testimonial and U.S. Const. amend. VI required the People produce the authors of the documents for cross-examination; the records were not typical business records for N.Y. C.P.L.R. 4518(a) purposes, but were instead prepared expressly for

use in litigation. People v Carreira, 893 N.Y.S.2d 844, 27 Misc. 3d 293, 2010 N.Y. Misc. LEXIS 91 (N.Y. City Ct. 2010).

In two driving under the influence per se cases, as there was no indication as to how e-signed breath test foundational documents were created, or whether the parties who signed the documents actually did the testing, the documents were inadmissible under the business record hearsay exception, N.Y. C.P.L.R. 4518. People v Hernandez, 915 N.Y.S.2d 824, 31 Misc. 3d 208, 2011 N.Y. Misc. LEXIS 87 (N.Y. City Ct. 2011).

In a driving under the influence case, where an e-signed simulator solution document or an e-signed instrument calibration certificate does not state whether the party who e-signed the instrument calibration or chemical analysis document actually did the testing, if the signer did not test the instrument or chemicals, in order to be admissible as a business record under N.Y. C.P.L.R. 4518, the document has to at least cite the source of the person's belief that the test was performed by an identified individual who had a business duty to conduct the test. People v Hernandez, 915 N.Y.S.2d 824, 31 Misc. 3d 208, 2011 N.Y. Misc. LEXIS 87 (N.Y. City Ct. 2011).

Breath Alcohol Analysis Record had to bear the original signature of the person who certified it for purposes of the prompt suspension law because the business record exception did not expressly authorize the use of a facsimile or photocopied signature. People v Bodendorf, 52 Misc. 3d 551, 30 N.Y.S.3d 516, 2016 N.Y. Misc. LEXIS 1623 (N.Y. J. Ct. 2016).

55. DNA tests

DNA reports prepared by non-testifying witnesses were not testimonial under the Confrontation Clause because the analysts were merely contemporaneously recording the testing procedures used, and the testifying witness was left to draw the inference from the evidence that second defendant's DNA profile matched those obtained from the rape kit; the Court of Appeals of New York declined to apply a bright line rule that DNA reports were non-testimonial as business records under N.Y. C.P.L.R. § 4518(a). People v Rawlin, 10 N.Y.3d 136, 855 N.Y.S.2d 20, 884

N.E.2d 1019, 2008 N.Y. LEXIS 277 (N.Y. 2008), cert. denied, 557 U.S. 934, 129 S. Ct. 2856, 174 L. Ed. 2d 601, 2009 U.S. LEXIS 4959 (U.S. 2009).

Witness's testimony provided a sufficient foundation for introducing documents relating to defendant's DNA under the business records rule, N.Y. C.P.L.R. 4518; under limited circumstances, a witness who is familiar with the practices of a company that produced the records at issue, and who generally relies upon such records, may have the requisite knowledge to meet the requirements for the admission of a business record, provided that the witness can also attest that (1) the record was made in the regular course of business, (2) it was the regular course of business to make such record, and (3) the record was made contemporaneously with the relevant event, thereby assuring its reliability. People v Brown, 13 N.Y.3d 332, 890 N.Y.S.2d 415, 918 N.E.2d 927, 2009 N.Y. LEXIS 4047 (N.Y. 2009).

Certain notes made by technician (who apparently could have been called as witness by defendant) as to DNA evidence during laboratory procedure were properly introduced at criminal trial, as business records, to prove that steps outlined therein were actually performed. People v Vega, 225 A.D.2d 890, 639 N.Y.S.2d 511, 1996 N.Y. App. Div. LEXIS 2283 (N.Y. App. Div. 3d Dep't), app. denied, 88 N.Y.2d 943, 647 N.Y.S.2d 177, 670 N.E.2d 461, 1996 N.Y. LEXIS 5215 (N.Y. 1996), app. denied sub nom. People v Garcia, 88 N.Y.2d 936, 647 N.Y.S.2d 169, 670 N.E.2d 453, 1996 N.Y. LEXIS 2667 (N.Y. 1996).

Paternity was proved where (1) HLA genetic DNA marker test report indicating 99.99 percent probability of paternity was properly admitted in evidence under CLS CPLR § 4518(d), (2) respondent did not submit any evidence to rebut presumption of paternity raised by admission of that report, and (3) child's mother testified that she had sexual relations with respondent during period in which child could have been conceived. Orleans County Dep't of Soc. Servs. v Aaron S., 281 A.D.2d 931, 721 N.Y.S.2d 853, 2001 N.Y. App. Div. LEXIS 2735 (N.Y. App. Div. 4th Dep't 2001).

DNA reports prepared by an analyst with the New York City Office of the Chief Medical Examiner were admissible as business records because a report on the profile of a donor and a

report on the possible match of the donor with a profile in a Combined DNA Index System database were prepared before defendant was suspected of or charged with the crime. While a third report, concerning the match of the DNA profiles, was testimonial in nature, the analyst who prepared it appeared at trial and was subject to cross-examination. People v Rodriguez, 153 A.D.3d 235, 59 N.Y.S.3d 337, 2017 N.Y. App. Div. LEXIS 5733 (N.Y. App. Div. 1st Dep't 2017), aff'd, 31 N.Y.3d 1067, 101 N.E.3d 977, 77 N.Y.S.3d 336, 2018 N.Y. LEXIS 1391 (N.Y. 2018).

In paternity proceeding commenced by child's mother shortly after putative father's death, DNA tests performed on decedent's frozen blood samples were admissible to determine paternity where, during pendency of matter and before hearing, legislature amended CLS Family Ct Act §§ 418, 532(a) and (b) and CLS CPLR § 4518(e) to authorize DNA testing in paternity proceedings. But, results of DNA tests performed on frozen blood samples were not inadmissible because they were conducted after decedent's death, as mother had standing to bring action under CLS Family Ct Act § 519(d), CLS Family Ct Act § 532 does not prohibit admission of post-death blood results in evidence, and decedent's blood was already drawn and available. Anne R. v Estate of Francis C., 167 Misc. 2d 343, 634 N.Y.S.2d 339, 1995 N.Y. Misc. LEXIS 541 (N.Y. Fam. Ct. 1995), aff'd, 234 A.D.2d 375, 651 N.Y.S.2d 539, 1996 N.Y. App. Div. LEXIS 12921 (N.Y. App. Div. 2d Dep't 1996).

DNA paternity test performed in connection with alleged father's television appearance on "The Sally Jesse Raphael Show" was not admissible to support his application to vacate filiation order previously entered on his admission of paternity because, while laboratory that performed test was approved by Department of Health, lab director's "certification" was invalid for "automatic" admissibility under CLS CPLR § 4518 and CLS Family Ct Act § 532 where test was not court ordered and, furthermore, samples were not taken at facility operated by authorized laboratory or gathered by registered phlebotomist, and laboratory accepted samples without proper verification of parties' identity and without ensuring chain of custody. Barbara Ann W. v Wy, 183 Misc. 2d 228, 701 N.Y.S.2d 845, 1999 N.Y. Misc. LEXIS 582 (N.Y. Fam. Ct. 1999).

Where defendant objected that the expert could not base the expert's testimony on a report showing that DNA testing of the victim's sample showed the presence of defendant's DNA where the expert did not oversee the testing on the sample, but defendant did not object to the trial court's admission of the report as a business record under N.Y. C.P.L.R. 4518(a), defendant conceded that the report was a business record. People v Bones, 17 A.D.3d 689, 793 N.Y.S.2d 545, 2005 N.Y. App. Div. LEXIS 4414 (N.Y. App. Div. 2d Dep't), app. denied, 5 N.Y.3d 826, 804 N.Y.S.2d 40, 837 N.E.2d 739, 2005 N.Y. LEXIS 2984 (N.Y. 2005).

Where the expert based the expert's testimony on a report of DNA testing performed on defendant by the expert's employees, the portion of the report that was based upon the testing supervised by the expert was properly admitted under the business records exception to the hearsay rule under N.Y. C.P.L.R. 4518(a). People v Bones, 17 A.D.3d 689, 793 N.Y.S.2d 545, 2005 N.Y. App. Div. LEXIS 4414 (N.Y. App. Div. 2d Dep't), app. denied, 5 N.Y.3d 826, 804 N.Y.S.2d 40, 837 N.E.2d 739, 2005 N.Y. LEXIS 2984 (N.Y. 2005).

In a social security case where a minor child sought social security benefits after the death of a deceased wage earner, the administrative law judge could have considered a DNA test taken posthumously because such a test was admissible under New York law, and although the chain of custody was not technically complete, the omissions were not sufficiently significant to disregard the results of the test. Thomas v Astrue, 674 F. Supp. 2d 507, 2009 U.S. Dist. LEXIS 114903 (S.D.N.Y. 2009).

56. Fingerprints

Because latent fingerprint comparison reports prepared by a non-testifying detective and used in first defendant's third-degree burglary prosecution were inherently accusatory and offered to prove an essential element of the crimes charged, the records could not be considered nontestimonial under Crawford, and the Court of Appeals of New York declined to apply a bright line rule that they were non-testimonial as business records under N.Y. C.P.L.R. § 4518(a); however, their admission was harmless error as the primary detective testified that he had

compared the same fingerprints and reached the same conclusions. People v Rawlin, 10 N.Y.3d 136, 855 N.Y.S.2d 20, 884 N.E.2d 1019, 2008 N.Y. LEXIS 277 (N.Y. 2008), cert. denied, 557 U.S. 934, 129 S. Ct. 2856, 174 L. Ed. 2d 601, 2009 U.S. LEXIS 4959 (U.S. 2009).

Testimony concerning fingerprint of second degree burglary and fourth degree grand larceny defendant was admissible, even though record containing print was not offered into evidence, where testimony was based on business-record exception to hearsay rule, proper foundation was proved, and admission of record itself would have involved undue risk of prejudice to defendant. People v Rudenko, 240 A.D.2d 599, 659 N.Y.S.2d 988, 1997 N.Y. App. Div. LEXIS 6922 (N.Y. App. Div. 2d Dep't), app. denied, 91 N.Y.2d 879, 668 N.Y.S.2d 578, 691 N.E.2d 650, 1997 N.Y. LEXIS 4699 (N.Y. 1997).

People’s application to introduce the actions and report of an unavailable criminalist who lifted a fingerprint from a robbery note through a senior criminalist at the same lab was granted if the proper foundation was laid under N.Y. C.P.L.R. 4518(a) since even though defendant had been arrested when the print was lifted, a comparison was not done until after the arrest; the recovery of the print resulted in the discovery of non-accusatory raw data similar to DNA tests, which had been found not violative of a defendant’s Confrontation Clause, U.S. Const. amend. VI, and N.Y. Const. art. I, § 6 rights. People v Doe, 959 N.Y.S.2d 839, 38 Misc. 3d 709, 2012 N.Y. Misc. LEXIS 5564 (N.Y. Sup. Ct. 2012).

57. Tissue tests

Results of a human leukocyte antigen tissue test were admissible as business records, even though the person who performed the tests was not called as a witness to verify the test procedure and results, where a proper foundation had been laid pursuant to CPLR § 4518(a). Debbie L.K. v Wayne Y., 96 A.D.2d 888, 466 N.Y.S.2d 46, 1983 N.Y. App. Div. LEXIS 19485 (N.Y. App. Div. 2d Dep't), app. denied, 60 N.Y.2d 558, 1983 N.Y. LEXIS 5708 (N.Y. 1983).

58. Urine tests

Evidence sustained discharge of firefighter where 2 samples of his urine taken 4 days apart showed presence of marihuana; Article 78 relief was not warranted on ground that such evidence constituted hearsay since (1) hearsay evidence is admissible in administrative proceedings, and findings of fact may be based on hearsay alone, and (2) in any event, laboratory records of urinalyses were within business records exception to hearsay rule. Lumsden v New York City Fire Dep't, 134 A.D.2d 595, 522 N.Y.S.2d 4, 1987 N.Y. App. Div. LEXIS 50803 (N.Y. App. Div. 2d Dep't 1987).

Evidence was insufficient to establish that petitioner violated parole rules by possessing and using controlled substance where only evidence of drug use or possession was uncertified report of drug tests performed by private laboratory on petitioner's urine samples, since violation was not demonstrated by preponderance of evidence as required by CLS Exec § 259-i(3)(f)(viii) and 9 NYCRR § 8005.20; test report was inadmissible hearsay since it did not qualify as business record as no witness was produced to lay proper foundation, and it was not admissible under CLS CPLR § 4518(c) as it was not record of hospital, library or governmental entity. People ex rel. Saafir v Mantello, 163 A.D.2d 824, 558 N.Y.S.2d 356, 1990 N.Y. App. Div. LEXIS 9487 (N.Y. App. Div. 4th Dep't 1990).

59. Xrays, MRI scans and the like

In wrongful death suit, laboratory reports, X-rays, and electrocardiograms included in file of decedent's physician and entered by either physician or his staff were admissible pursuant to CLS CPLR § 4518; that such records were prepared by other persons merely affects weight of evidence, not admissibility. 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).

In personal injury action arising from automobile accident, report prepared by plaintiff's physician was not admissible as business record under CLS CPLR § 4518 where it was medical report and interpretation of MRI film, as opposed to day-to-day business entry of treating physician.

Komar v Showers, 227 A.D.2d 135, 641 N.Y.S.2d 643, 1996 N.Y. App. Div. LEXIS 4743 (N.Y. App. Div. 1st Dep't 1996).

In medical malpractice action, MRI report interpreting infant plaintiff's MRI scan was admissible documentary evidence sufficient to raise triable issue of fact as to whether persons whose names were listed in report directly below its findings were involved in allegedly erroneous interpretation of MRI. Rotundo v S & C Magnetic Resonance Imaging P.C., 255 A.D.2d 573, 681 N.Y.S.2d 68, 1998 N.Y. App. Div. LEXIS 12870 (N.Y. App. Div. 2d Dep't 1998).

Because a radiologist's report, which was submitted in support of a claim of a serious injury under N.Y. Ins. Law § 5102(d), was unsworn and not properly certified as a business record under N.Y. C.P.L.R. 4518(a), it was not submitted in admissible form; therefore, an injured child's mother was not entitled to summary judgment in her personal injury action. Sauter v Calabretta, 90 A.D.3d 1702, 936 N.Y.S.2d 469, 2011 N.Y. App. Div. LEXIS 9511 (N.Y. App. Div. 4th Dep't 2011).

In personal injury action, court would deny defendant's motion in limine to preclude plaintiff from introducing X rays into evidence which did not comply with authentication and notice requirements of CLS CPLR § 4532-a since literal compliance with statute was not required where plaintiff asserted (1) that X rays were part of his hospital records which were otherwise admissible as business records under CLS CPLR §§ 2306 and 4518, and (2) X rays were in court pursuant to defendant's own subpoena. Hoffman v New York, 141 Misc. 2d 893, 535 N.Y.S.2d 342, 1988 N.Y. Misc. LEXIS 713 (N.Y. Sup. Ct. 1988).

II. Under Former Civil Practice Laws

A. In General

60. Generally

Under CPA §§ 373, 374 (Rule 3116(c) herein) the original books of a foreign corporation, which had been in the custody of one of the officers of such corporation, were admissible to prove its corporate acts in an action brought against a transferee of stock for unpaid calls and were presumptive evidence without proving the correctness of entries. Sigua Iron Co. v Brown, 171 N.Y. 488, 64 N.E. 194, 171 N.Y. (N.Y.S.) 488, 1902 N.Y. LEXIS 876 (N.Y. 1902).

Purpose of the statute was to secure a more workable rule of evidence in the proof of business transactions under existing business conditions. Johnson v Lutz, 253 N.Y. 124, 170 N.E. 517, 253 N.Y. (N.Y.S.) 124, 1930 N.Y. LEXIS 809 (N.Y. 1930); Shea v McKeon, 264 A.D. 573, 35 N.Y.S.2d 962, 1942 N.Y. App. Div. LEXIS 4208 (N.Y. App. Div. 1942).

The purpose of CPA § 374-a was to overcome the objection of the hearsay rule. Kelly v Wasserman, 5 N.Y.2d 425, 185 N.Y.S.2d 538, 158 N.E.2d 241, 1959 N.Y. LEXIS 1440 (N.Y. 1959).

When it does not appear that there were any written minutes of meetings of the trustees of a membership corporation, or any record of contracts alleged to have been made, parol evidence of such matters is proper. Braxmar v Stanton, 110 A.D. 167, 96 N.Y.S. 1096, 1905 N.Y. App. Div. LEXIS 3889 (N.Y. App. Div. 1905).

CPA § 374-a was enacted in order to do away with archaic rules of procedure in relation to book entries. Needle v New York R. Corp., 227 A.D. 276, 237 N.Y.S. 547, 1929 N.Y. App. Div. LEXIS 6414 (N.Y. App. Div. 1929), aff'd, 231 A.D. 811, 246 N.Y.S. 880, 1930 N.Y. App. Div. LEXIS 8004 (N.Y. App. Div. 1st Dep't 1930).

CPA § 374-a cited. Mason v Metropolitan Life Ins. Co., 236 A.D. 734, 257 N.Y.S. 1071, 1932 N.Y. App. Div. LEXIS 6536 (N.Y. App. Div. 1932).

CPA § 374-a had to be interpreted in the light of the “shopbook” rule, to which it was related. Roge v Valentine, 255 A.D. 475, 7 N.Y.S.2d 958, 1938 N.Y. App. Div. LEXIS 4779 (N.Y. App. Div. 1938), reh'g denied, 256 A.D. 817, 9 N.Y.S.2d 900, 1939 N.Y. App. Div. LEXIS 4984 (N.Y.

App. Div. 1939), rev'd, 280 N.Y. 268, 20 N.E.2d 751, 280 N.Y. (N.Y.S.) 268, 1939 N.Y. LEXIS 1316 (N.Y. 1939).

Compliance with CPA § 374-a was required. Klepak v Eisenberg, 264 A.D. 794, 35 N.Y.S.2d 175, 1942 N.Y. App. Div. LEXIS 4760 (N.Y. App. Div. 1942).

CPA § 374-a did not authorize receipt in evidence of records giving version of third persons as to manner in which accident happened. Cox v State, 282 A.D. 815, 122 N.Y.S.2d 589, 1953 N.Y. App. Div. LEXIS 5006 (N.Y. App. Div.), modified, 282 A.D. 912, 124 N.Y.S.2d 917, 1953 N.Y. App. Div. LEXIS 5388 (N.Y. App. Div. 1953).

Entries made in the usual course of business are prima facie proof of the correctness of the assets and liabilities set forth. In re Auditore's Estate, 240 N.Y.S. 502, 136 Misc. 664, 1930 N.Y. Misc. LEXIS 1084 (N.Y. Sur. Ct. 1930), aff'd, 233 A.D. 740, 250 N.Y.S. 902 (N.Y. App. Div. 1931).

The statute gives competency as evidence, to regular records in business, without the preliminary proof before required. People v S. W. Straus & Co., 285 N.Y.S. 648, 158 Misc. 186, 1935 N.Y. Misc. LEXIS 1788 (N.Y. Sup. Ct. 1935), modified, 248 A.D. 785, 289 N.Y.S. 209, 1936 N.Y. App. Div. LEXIS 7319 (N.Y. App. Div. 1936), aff'd, 248 A.D. 785, 290 N.Y.S. 423 (N.Y. App. Div. 1936), aff'd, 248 A.D. 785, 290 N.Y.S. 423, 289 N.Y.S. 209, 1936 N.Y. App. Div. LEXIS 7319 (N.Y. App. Div. 2d Dep't 1936).

The statute does not give evidentiary worth to what before was without probative value. People v S. W. Straus & Co., 285 N.Y.S. 648, 158 Misc. 186, 1935 N.Y. Misc. LEXIS 1788 (N.Y. Sup. Ct. 1935), modified, 248 A.D. 785, 289 N.Y.S. 209, 1936 N.Y. App. Div. LEXIS 7319 (N.Y. App. Div. 1936), aff'd, 248 A.D. 785, 290 N.Y.S. 423 (N.Y. App. Div. 1936), aff'd, 248 A.D. 785, 290 N.Y.S. 423, 289 N.Y.S. 209, 1936 N.Y. App. Div. LEXIS 7319 (N.Y. App. Div. 2d Dep't 1936).

Writing in regular course of business, made at time of transaction, occurrence or event or within reasonable time thereafter, is admissible, regardless of whether it is hearsay or self-serving.

Publishers' Book Bindery, Inc. v Ziegelheim, 54 N.Y.S.2d 798, 184 Misc. 559, 1945 N.Y. Misc. LEXIS 1770 (N.Y. App. Term 1945).

Hearsay or self-serving nature of writing does not preclude record as evidence. In re Klausner's Will, 77 N.Y.S.2d 775, 192 Misc. 790, 1948 N.Y. Misc. LEXIS 2194 (N.Y. Sur. Ct. 1948).

CPA § 374-a provided specifically for receiving hearsay testimony and written records as proof of act or occurrence. Schaefer v Fidelity & Casualty Co., 123 N.Y.S.2d 787, 203 Misc. 633, 1953 N.Y. Misc. LEXIS 2038 (N.Y. App. Term 1953).

Books of foreign corporation are admissible to prove an act or transaction of such corporation, and pertinent entries, unless objected to, may be read into evidence in lieu of such books. In re Borden's Will, 41 N.Y.S.2d 269, 1943 N.Y. Misc. LEXIS 1816 (N.Y. Sur. Ct. 1943), aff'd, 267 A.D. 823, 47 N.Y.S.2d 120 (N.Y. App. Div. 1944).

Purpose was to do away with technical rulings which excluded records ordinarily used in business transactions when not formally identified by makers. Ulm v Moore-McCormack Lines, Inc., 115 F.2d 492, 1940 U.S. App. LEXIS 2910 (2d Cir. N.Y. 1940), reh'g denied, 117 F.2d 222, 1941 U.S. App. LEXIS 4209 (2d Cir. N.Y. 1941), cert. denied, 313 U.S. 567, 61 S. Ct. 941, 85 L. Ed. 1525, 1941 U.S. LEXIS 715 (U.S. 1941).

61. Usual course of business

CPA § 374-a referred to an act, transaction, occurrence or event in which someone engaged in the business actually participated. Memorandum made by a policeman from statements of persons who witnessed an accident, was inadmissible. Johnson v Lutz, 253 N.Y. 124, 170 N.E. 517, 253 N.Y. (N.Y.S.) 124, 1930 N.Y. LEXIS 809 (N.Y. 1930).

Office memorandum of telephone call to office of plaintiff’s attorney and taken by his secretary in his absence, made in regular course of office business, concerning letter involved in litigation, was admissible. Ruegg v Fairfield Sec. Corp., 308 N.Y. 313, 125 N.E.2d 585, 308 N.Y. (N.Y.S.) 313, 1955 N.Y. LEXIS 999 (N.Y. 1955).

In several actions against a gas company for negligently turning on the gas in an apartment while the pipes were out of repair, it was held that its memorandum referring to the turning on of the gas, overlooked at the trial, might be of strong probative force in the new trial which was ordered. Neglia v Chadorow, 227 A.D. 200, 237 N.Y.S. 81, 1929 N.Y. App. Div. LEXIS 6389 (N.Y. App. Div. 1929).

A letter written by an attorney to his client in the course of his duty, at a time and under such circumstances negativing any suggestion that it could have been prompted by a design to make evidence to be used later, was admitted since the rule against hearsay and self-serving declarations should sometimes be relaxed. Gibbons v Perkins, 230 N.Y.S. 273, 132 Misc. 583, 1928 N.Y. Misc. LEXIS 1280 (N.Y. Sup. Ct. 1928).

Record kept by claimant for services rendered to decedent, based solely on testimony of claimant, was inadmissible under CPA § 347 (§ 4519 herein). In re Mulderig, 91 N.Y.S.2d 895, 196 Misc. 527, 1949 N.Y. Misc. LEXIS 2736 (N.Y. Sur. Ct. 1949).

The report of an accident made by an employee of a defendant has been held not to be a record made in the regular course of business. Castiglione v State, 8 Misc. 2d 932, 169 N.Y.S.2d 145, 1956 N.Y. Misc. LEXIS 1664 (N.Y. Ct. Cl. 1956).

An entry in defendant’s records showing amount of trade-in allowance is not admissible as against third persons to establish reasonable value of article traded in. Samuel Breiter & Co. v Ward La France Truck Corp., 19 Misc. 2d 958, 189 N.Y.S.2d 305, 1959 N.Y. Misc. LEXIS 3449 (N.Y. App. Term 1959).

Letters from estate claimant, written by college officials to testator, as to renewal of testator’s note given for college endowment subscription fund, were admissible on settlement of executor’s account. In re Borden's Will, 41 N.Y.S.2d 269, 1943 N.Y. Misc. LEXIS 1816 (N.Y. Sur. Ct. 1943), aff'd, 267 A.D. 823, 47 N.Y.S.2d 120 (N.Y. App. Div. 1944).

Memorandum made in course of business under supervision of person since deceased, was admissible. Weidenfeld v Pacific Imp. Co., 43 F.2d 817, 1930 U.S. App. LEXIS 3956 (2d Cir.

N.Y.), cert. denied, 282 U.S. 890, 51 S. Ct. 102, 75 L. Ed. 784, 1930 U.S. LEXIS 341 (U.S. 1930).

62. —Work sheets

Where claim is made against estate for work done on real property owned by decedent, ledger entries made in the regular course of business from daily work sheets submitted by plaintiff's foreman were admissible under CPA § 374-a and the work done and reasonableness of the amounts claimed were properly established by testimony of claimant's foreman. In re Estate of Phillips, 10 Misc. 2d 714, 173 N.Y.S.2d 632, 1958 N.Y. Misc. LEXIS 3429 (N.Y. Sur. Ct. 1958).

63. Private or personal records

A letter written by plaintiff to defendants confirming a verbal agreement setting forth the contract between the parties should have been received in evidence when offered by defendants, without the limitations and restrictions of CPA § 374-a. Outpost Farm & Nursery Corp. v Fisher, 236 A.D. 846, 259 N.Y.S. 999, 1932 N.Y. App. Div. LEXIS 7495 (N.Y. App. Div. 1932).

Private memorandum was not admissible under CPA § 374-a. Shea v McKeon, 264 A.D. 573, 35 N.Y.S.2d 962, 1942 N.Y. App. Div. LEXIS 4208 (N.Y. App. Div. 1942).

Private records of decedent, in his own handwriting and found in suitcase preserved by decedent's executrix for fourteen years, held admissible to establish title in decedent to securities found in safety deposit box. In re Rosenberg's Estate, 264 A.D. 914, 35 N.Y.S.2d 910, 1942 N.Y. App. Div. LEXIS 5334 (N.Y. App. Div. 1942), aff'd, 289 N.Y. 778, 46 N.E.2d 845, 289 N.Y. (N.Y.S.) 778, 1943 N.Y. LEXIS 1184 (N.Y. 1943).

64. Authentication of and laying foundation for records

Admission in evidence without proper authentication of so-called minutes taken in an action between the same parties in the Municipal Court, was error. Hofstetter v Goldenberg, 230 N.Y.S. 353, 132 Misc. 772, 1928 N.Y. Misc. LEXIS 985 (N.Y. App. Term 1928).

Before CPA § 374-a became effective, proper foundation was laid for introduction of books in evidence. Herman Apfelbaum, Inc. v Abraham Keizer & Bro., Inc., 233 N.Y.S. 587, 133 Misc. 722, 1929 N.Y. Misc. LEXIS 724 (N.Y. App. Term 1929).

Record of payment received in regular course of business, if established and proper foundation for receipt laid, is admissible. Tally v Rubin, 118 N.Y.S.2d 798, 1953 N.Y. Misc. LEXIS 1477 (N.Y. App. Term 1953).

B. Health, Medical And Vital Statistics and Records

65. Physicians' records and statements

An exhibit containing opinions which were not records of an act, transaction, occurrence or event made in the course of a doctor's profession, was not admissible in evidence. Goodkin v Brooklyn & Queens Transit Corp., 241 A.D. 737, 269 N.Y.S. 809, 1934 N.Y. App. Div. LEXIS 9295 (N.Y. App. Div.), aff'd, 265 N.Y. 638, 193 N.E. 422, 265 N.Y. (N.Y.S.) 638, 1934 N.Y. LEXIS 1229 (N.Y. 1934).

In an action to recover double indemnity, under life insurance policies, in which the sole issue of fact raised at the trial was as to whether the death of the insured was caused by carbon monoxide alone, or by carbon monoxide and heart trouble, or by heart trouble alone, it was prejudicial error to admit in evidence an affidavit of the insured's physician that the cause of death was heart trouble. Poses v Travelers' Ins. Co., 245 A.D. 304, 281 N.Y.S. 126, 1935 N.Y. App. Div. LEXIS 10287 (N.Y. App. Div. 1935).

Letters from doctors to railroad company, describing plaintiff's injuries, offered in evidence by plaintiff, were admissible in action for personal injuries, under Federal Business Records Act.

Korte v New York, N. H. & H. R. Co., 191 F.2d 86, 1951 U.S. App. LEXIS 2528 (2d Cir. N.Y.), cert. denied, 342 U.S. 868, 72 S. Ct. 108, 96 L. Ed. 652, 1951 U.S. LEXIS 1398 (U.S. 1951).

66. —Diagnostic charts, graphs and X-rays

In an action against a dentist for malpractice, X-ray plates were not admissible under CPA § 374-a. Berlin v Bulkowstein, 249 A.D. 630, 291 N.Y.S. 91, 1936 N.Y. App. Div. LEXIS 5307 (N.Y. App. Div. 1936).

In action for injuries by falling plaster, it was error to exclude electroencephalogram and records respecting it, made in regular course of business. Mayole v B. Crystal & Son, Inc., 266 A.D. 1008, 44 N.Y.S.2d 411, 1943 N.Y. App. Div. LEXIS 5740 (N.Y. App. Div. 1943).

67. Hospital records

Copies of hospital records relating to insanity of the grandmother of the defendant charged with robbery admissible. People v Kohlmeyer, 284 N.Y. 366, 31 N.E.2d 490, 284 N.Y. (N.Y.S.) 366, 1940 N.Y. LEXIS 798 (N.Y. 1940).

Presence of physician in court, who produced records of hospital relating to plaintiff's case against hospital and physicians for malpractice does not exclude such records. Meiselman v Crown Heights Hospital, 285 N.Y. 389, 34 N.E.2d 367, 285 N.Y. (N.Y.S.) 389, 1941 N.Y. LEXIS 1514 (N.Y. 1941).

Entries of observations of, and services rendered by, doctors and nurses to patients, when otherwise admissible, may be admitted in evidence if made in the regular course of the conduct of a hospital. In re O'Grady's Estate, 254 A.D. 691, 3 N.Y.S.2d 778, 1938 N.Y. App. Div. LEXIS 7153 (N.Y. App. Div. 1938).

In actions by an infant in arms, brought by her father as guardian ad litem for personal injuries, by the mother of the infant for personal injuries, and by the father for expenses and loss of services, records of the hospital where the infant plaintiff was born were admissible in evidence,

under this section, and were material on the issue as to the cause of the idiocy of the infant. Budka v Schenectady, 256 A.D. 764, 12 N.Y.S.2d 603, 1939 N.Y. App. Div. LEXIS 4840 (N.Y. App. Div. 1939).

Historical part of hospital record was admissible as to truth of statements therein in action on policy for health benefits. Erickson v Commercial Casualty Ins. Co., 265 A.D. 327, 39 N.Y.S.2d 72, 1942 N.Y. App. Div. LEXIS 5747 (N.Y. App. Div. 1942).

Accident and injury report, in state mental hospital, stating that injured inmate stated that another named inmate had come into former's room and pushed her, when she fell to floor and was injured, was not admissible as entry made in regular course of business. Cox v State, 282 A.D. 815, 122 N.Y.S.2d 589, 1953 N.Y. App. Div. LEXIS 5006 (N.Y. App. Div.), modified, 282 A.D. 912, 124 N.Y.S.2d 917, 1953 N.Y. App. Div. LEXIS 5388 (N.Y. App. Div. 1953).

Hospital records are admissible in evidence when shown to have been made in regular course of business and it was regular course of business to make such record at time of act or within reasonable time thereafter. Fischer v New York, 138 N.Y.S.2d 754, 207 Misc. 528, 1955 N.Y. Misc. LEXIS 2678 (N.Y. Sup. Ct. 1955).

In action by state hospital patient who claimed assault by attendant, patient's narrative to physician, who asked patient how he was injured, was hearsay and inadmissible, either upon ground that it was made in regular course of business or that it constituted admission by State. Roden v State, 147 N.Y.S.2d 96, 208 Misc. 1076, 1955 N.Y. Misc. LEXIS 2991 (N.Y. Ct. Cl. 1955).

Hospital records which relate to diagnosis, prognosis or treatment or which are otherwise helpful to an understanding of the medical aspects of the hospitalization are admissible in evidence. Polcsa v East River Management Corp., 8 Misc. 2d 798, 160 N.Y.S.2d 658, 1957 N.Y. Misc. LEXIS 3294, 1957 N.Y. Misc. LEXIS 3295 (N.Y. App. Term 1957).

Hospital records and medical examiner’s reports were admissible despite the hearsay objections under CPA § 374-a. People v Preston, 13 Misc. 2d 802, 176 N.Y.S.2d 542, 1958 N.Y. Misc. LEXIS 2908 (N.Y. County Ct. 1958).

68. —Notations on records

Social service memorandum, containing opinion of layman whom investigator contracted as to traits of defendant patient where informant was under no duty to impart information, was inadmissible. People v Samuels, 302 N.Y. 163, 96 N.E.2d 757, 302 N.Y. (N.Y.S.) 163, 1951 N.Y. LEXIS 761 (N.Y. 1951), limited, People v Crossland, 9 N.Y.2d 464, 214 N.Y.S.2d 728, 174 N.E.2d 604, 1961 N.Y. LEXIS 1323 (N.Y. 1961).

In will contest wherein issue was testamentary capacity, hospital records made by physicians who treated testatrix and contained observations to her disorder, were properly excluded. In re Coddington's Will, 307 N.Y. 181, 120 N.E.2d 777, 307 N.Y. (N.Y.S.) 181, 1954 N.Y. LEXIS 991 (N.Y. 1954).

Memorandum made in hospital record of acts or occurrences leading to patient’s hospitalization, such as narration of accident causing his injury, not germane to diagnosis or treatment, was not admissible under CPA § 374-a. Williams v Alexander, 309 N.Y. 283, 129 N.E.2d 417, 309 N.Y. (N.Y.S.) 283, 1955 N.Y. LEXIS 926 (N.Y. 1955).

Portion of hospital record containing statement made by plaintiff patient to physician as to manner in which accident happened was erroneously admitted, since such portion was not made in regular course of business. Williams v Alexander, 309 N.Y. 283, 129 N.E.2d 417, 309 N.Y. (N.Y.S.) 283, 1955 N.Y. LEXIS 926 (N.Y. 1955).

Hospital record containing report of policeman based upon hearsay information obtained by him after the accident was inadmissible. Wolf v Kaufmann, 227 A.D. 281, 237 N.Y.S. 550, 1929 N.Y. App. Div. LEXIS 6416 (N.Y. App. Div. 1929), app. dismissed, 254 N.Y. 598, 173 N.E. 882, 254 N.Y. (N.Y.S.) 598, 1930 N.Y. LEXIS 1207 (N.Y. 1930).

In an action under an accident insurance policy hospital records describing the decedent's condition, previously submitted by plaintiff to another insurance company as part of a proof of claim against that company, were properly admitted in evidence as admissions. Scheiner v Metropolitan Life Ins. Co., 236 A.D. 24, 257 N.Y.S. 783, 1932 N.Y. App. Div. LEXIS 5877 (N.Y. App. Div. 1932).

Admission in evidence of hospital record to effect that plaintiff in action for injuries suffered, when struck by automobile truck, was intoxicated at time of accident is incompetent. Geroeami v Fancy Fruit & Produce Corp., 249 A.D. 221, 291 N.Y.S. 837, 1936 N.Y. App. Div. LEXIS 5075 (N.Y. App. Div. 1936).

Opinions of doctors with reference to the patient's disorder not admissible although noted on or entered with hospital record. In re O'Grady's Estate, 254 A.D. 691, 3 N.Y.S.2d 778, 1938 N.Y. App. Div. LEXIS 7153 (N.Y. App. Div. 1938).

Notations on hospital records were not made admissible in evidence by CPA § 374-a. Cottrell v Prudential Ins. Co., 260 A.D. 986, 23 N.Y.S.2d 335, 1940 N.Y. App. Div. LEXIS 5699 (N.Y. App. Div. 1940).

In action on life policy for double indemnity under accidental death rider, error was committed by insurer in cross-examination of plaintiff's witness to show that hospital records contained notations that insured had taken 10 bichloride of mercury tablets, as such notations are inadmissible. Cottrell v Prudential Ins. Co., 260 A.D. 986, 23 N.Y.S.2d 335, 1940 N.Y. App. Div. LEXIS 5699 (N.Y. App. Div. 1940).

In action for personal injuries in automobile accident, hospital records held admissible, except part reading "but evidently, after day of beer and wine drinking, he was somehow involved in auto accident." Roberto v Nielson, 262 A.D. 1035, 30 N.Y.S.2d 334, 1941 N.Y. App. Div. LEXIS 7127 (N.Y. App. Div. 1941), aff'd, 288 N.Y. 581, 42 N.E.2d 27, 288 N.Y. (N.Y.S.) 581, 1942 N.Y. LEXIS 1430 (N.Y. 1942).

Admission of entire hospital record is error where parts related to hearsay happening of accident. Constantinides v Manhattan Transit Co., 264 A.D. 147, 34 N.Y.S.2d 600, 1942 N.Y. App. Div. LEXIS 4090 (N.Y. App. Div. 1942).

Nurses' entries, see In re Boyle's Will, 271 A.D. 614, 67 N.Y.S.2d 348, 1947 N.Y. App. Div. LEXIS 5106 (N.Y. App. Div.), app. denied, 271 A.D. 1053, 68 N.Y.S.2d 745, 1947 N.Y. App. Div. LEXIS 5806 (N.Y. App. Div. 1947).

In action against hospital for injuries to patient from failure to install bed sideboards, written entry by hospital physician as to bed sideboards was admissible under former CPA § 474-a, and binding on hospital as admission against interest. Pivar v Manhattan General, Inc., 279 A.D. 522, 110 N.Y.S.2d 786, 1952 N.Y. App. Div. LEXIS 4712 (N.Y. App. Div. 1952).

In action by bowling alley patron against owners for assault by allegedly insane employee, for negligently employing and retaining him, records of state hospital containing statements by employee as to prior history, which plaintiff offered to show prior irrational conduct, were inadmissible as not made in regular course of business. Vanderhule v Berinstein, 285 A.D. 290, 136 N.Y.S.2d 95, 1954 N.Y. App. Div. LEXIS 3318 (N.Y. App. Div.), amended, 284 A.D. 1089, 136 N.Y.S.2d 349, 1954 N.Y. App. Div. LEXIS 4634 (N.Y. App. Div. 1954).

In an action on a policy of life insurance a hospital record is admissible under this section to show that deceased was treated and the date of his entry and discharge, but is not competent to prove the diagnosis. Palmer v John Hancock Mut. Life Ins. Co., 270 N.Y.S. 10, 150 Misc. 669, 1934 N.Y. Misc. LEXIS 1123 (N.Y. App. Term 1934).

In action for injury to passenger riding on subway, hospital record, reading "patient was riding in subway, when it came to a sudden stop," was inadmissible as hearsay on vital issue in case. Del Re v New York, 42 N.Y.S.2d 825, 180 Misc. 525, 1943 N.Y. Misc. LEXIS 2072 (N.Y. App. Term 1943).

Admission cards of hospital relating to last illness of decedent are inadmissible to establish his residence, in absence of proof as to source of information as to statements of residence

appearing therein. In re Bourne's Estate, 41 N.Y.S.2d 336, 181 Misc. 238, 1943 N.Y. Misc. LEXIS 1824 (N.Y. Sur. Ct. 1943), aff'd, 267 A.D. 876, 47 N.Y.S.2d 134, 1944 N.Y. App. Div. LEXIS 5253 (N.Y. App. Div. 1944).

Hospital record, reading “plaintiff states she fell getting off street car, and thinks her heel slipped on street,” was not hearsay, but record of transaction, and admissible. Cerniglia v New York, 49 N.Y.S.2d 447, 182 Misc. 441, 1944 N.Y. Misc. LEXIS 2120 (N.Y. Sup. Ct. 1944).

In action for negligent death of patient in state mental hospital, hospital “Accident, Injury and Escape Report,” describing events immediately preceding death of decedent and relating matter not witnessed by State psychiatrist making and signing report but reported to him by other hospital employees, was admissible as admission by State. In re Pierre's Estate, 139 N.Y.S.2d 825, 207 Misc. 726, 1955 N.Y. Misc. LEXIS 3047 (N.Y. Ct. Cl.), rev'd, 286 A.D. 573, 146 N.Y.S.2d 81, 1955 N.Y. App. Div. LEXIS 4093 (N.Y. App. Div. 1955).

69. Autopsy and coroners’ reports

Autopsy report of county medical examiner, who died before trial, was admissible, despite constitutional requirement that accused be confronted by witnesses and 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).

Findings in autopsy report are admissible in evidence. Silver v Sobel, 7 A.D.2d 728, 180 N.Y.S.2d 699, 1958 N.Y. App. Div. LEXIS 4102 (N.Y. App. Div. 2d Dep't 1958), app. denied, 5 N.Y.2d 710, 1959 N.Y. LEXIS 2000 (N.Y. 1959).

Autopsy report of county medical examiner, with his opinion as to cause of victim’s death, was held inadmissible. People v Nisonoff, 50 N.Y.S.2d 420, 181 Misc. 696, 1943 N.Y. Misc. LEXIS

2888 (N.Y. Sup. Ct. 1943), aff'd, 293 N.Y. 597, 59 N.E.2d 420, 293 N.Y. (N.Y.S.) 597, 1944 N.Y. LEXIS 1268 (N.Y. 1944).

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).

Findings in autopsy report are admissible in evidence. People v Higgins, 21 Misc. 2d 94, 196 N.Y.S.2d 222 (N.Y. County Ct. 1960).

70. Death certificate

Death certificate and medical examiner’s report, containing conclusory and hearsay statements that insured’s death had resulted from “accident” and that he was “said to have fallen on subway platform” was inadmissible in action on life policy. Welz v Commer. Travelers Mut. Accident Ass'n, 266 A.D. 668, 40 N.Y.S.2d 128, 1943 N.Y. App. Div. LEXIS 3782 (N.Y. App. Div. 2d Dep't 1943).

Cause of death: in action for wrongful death, trial court erred in limiting evidentiary effect of death certificate to time and place of decedent’s death, and in excluding part showing cause of death. Duffy v 42nd Street, M. & S. N. Av. R. Co., 266 A.D. 865, 42 N.Y.S.2d 534, 1943 N.Y. App. Div. LEXIS 4957 (N.Y. App. Div. 1943).

C. Miscellaneous Records

71. Banking

Testimony in summary proceeding to dispossess as to banking records of landlord properly excluded as incompetent and hearsay. Goodman v Schached, 260 N.Y.S. 883, 144 Misc. 905, 1932 N.Y. Misc. LEXIS 1659 (N.Y. County Ct. 1932).

A certificate of protest kept as a bank record is admissible under this section, but where the notary who made it testifies that he did not personally present the note, the certificate then becomes hearsay and without probative force. Hyman Goldman Plumbing & Heating Corp. v Nesbit, 267 N.Y.S. 889, 149 Misc. 606, 1933 N.Y. Misc. LEXIS 1733 (N.Y. App. Term 1933).

72. Books of account

In an action by a corporation against executors to recover balance due on a running account of their decedent, a bookkeeper of the corporation, a stockholder thereof was competent to testify as to the accuracy of the books of account. William L. Mantha Co. v De Graff, 266 N.Y. 581, 195 N.E. 209, 266 N.Y. (N.Y.S.) 581, 1935 N.Y. LEXIS 1462 (N.Y. 1935).

Where books of account were put in evidence it was error to refuse an offer in evidence of part of the book to show that all the entries were similar and made at the same time. Leidesdorf v Norwich Union Fire Ins. Soc., 227 A.D. 324, 237 N.Y.S. 563, 1929 N.Y. App. Div. LEXIS 6429 (N.Y. App. Div. 1929).

In an action to recover money loaned, the receipt of the entry of the making of the loan in the memorandum book of the plaintiff’s intestate was error, as such entry was a self-serving declaration not within the purview of CPA § 374-a. Bogatin v Brader, 243 A.D. 856, 278 N.Y.S. 780, 1935 N.Y. App. Div. LEXIS 8618 (N.Y. App. Div. 1935).

Notebook, showing entries of charges and credits held inadmissible in absence of evidence indicating that book was record made in usual course of business and not entries based on voluntary hearsay statements made by third parties not in business or under duty as to them. In re Pappalau's Estate, 261 A.D. 705, 27 N.Y.S.2d 787, 1941 N.Y. App. Div. LEXIS 7415 (N.Y. App. Div. 1941), aff'd, 287 N.Y. 795, 40 N.E.2d 653, 287 N.Y. (N.Y.S.) 795, 1942 N.Y. LEXIS 1807 (N.Y. 1942).

Review of history of rule which permitted books of account to be received in evidence in this State. Warner Quinlan Co. v Ben Charat, Inc., 257 N.Y.S. 722, 143 Misc. 443, 1932 N.Y. Misc. LEXIS 1136 (N.Y. App. Term 1932).

Ledger entries, where identified by a bookkeeper who made said entries, are admissible in evidence. Warner Quinlan Co. v Ben Charat, Inc., 257 N.Y.S. 722, 143 Misc. 443, 1932 N.Y. Misc. LEXIS 1136 (N.Y. App. Term 1932).

In an action to recover rent, the original ledger and monthly statements prepared in the regular course of business by the agent managing the property are admissible in evidence. Funk v Modo Lora Realty, Inc., 260 N.Y.S. 844, 145 Misc. 805, 1932 N.Y. Misc. LEXIS 1653 (N.Y. App. Term 1932).

The so-called shop book rule does not authorize the reception in evidence of a record of mere cash transactions. In re De Simone's Estate, 270 N.Y.S. 618, 151 Misc. 87, 1934 N.Y. Misc. LEXIS 1195 (N.Y. Sur. Ct. 1934).

In action brought by administratrix of lawyer for accounting, intestate’s personal diary and account book, showing details of his financial transactions, were not competent as evidence in plaintiff’s behalf to show nature of transactions between the parties. The same was true of memoranda relating to his daily activities in connection with affairs of his clients, which were dictated by intestate to his secretary and submitted to him for perusal and signature and then placed on file, although the secretary was alive and testified to the procedure. These entries were not entries made in the regular course of business, as the term was used in CPA § 374-a. Hughes v Eastern Contracting Co., 297 N.Y.S. 272, 164 Misc. 318, 1937 N.Y. Misc. LEXIS 1370 (N.Y. Sup. Ct. 1937).

73. Carriers

Records of a railroad were admitted in evidence under CPA § 374-a. Harrison v New York C. R. Co., 255 A.D. 183, 6 N.Y.S.2d 978, 1938 N.Y. App. Div. LEXIS 4686 (N.Y. App. Div. 1938),

reh'g denied, 255 A.D. 1032, 8 N.Y.S.2d 1017, 1938 N.Y. App. Div. LEXIS 6320 (N.Y. App. Div. 1938), aff'd, 281 N.Y. 653, 22 N.E.2d 483, 281 N.Y. (N.Y.S.) 653, 1939 N.Y. LEXIS 1102 (N.Y. 1939).

In an action for whisky sold and delivered, admission of carrier's receipt signed by purported agent without proof of such person's identity and authority erroneous. Permittee's report was inadmissible without proof that the signature thereon was that of the defendant. Distillers Agents, Inc. v Pershan, 262 N.Y.S. 112, 146 Misc. 378, 1933 N.Y. Misc. LEXIS 1471 (N.Y. App. Term 1933).

In action for death of intestate by his administrator at railroad crossing against railroad, plaintiff may discover and inspect defendant's records of statements made by its employees in regular course of their employment, pertaining to accident, and such statements are not privileged. De Vito v New York C. R. Co., 32 Misc. 2d 494, 146 N.Y.S.2d 545, 1955 N.Y. Misc. LEXIS 2170 (N.Y. Sup. Ct. 1955), aff'd, 3 A.D.2d 692, 159 N.Y.S.2d 468, 1957 N.Y. App. Div. LEXIS 6706 (N.Y. App. Div. 4th Dep't 1957).

74. Checks and stubs

The notation on the stub of a check was not a "record of any act, transaction, occurrence or event . . . made in the regular course of any business" which was admissible in evidence under CPA § 374-a. People v Robinson, 273 N.Y. 438, 8 N.E.2d 25, 273 N.Y. (N.Y.S.) 438, 1937 N.Y. LEXIS 1227 (N.Y. 1937).

Upon the trial of a patrolman on charges that he had accepted and received from an attorney checks for various amounts, as gratuities, without the consent of the Police Commissioner, it was improper to receive in evidence generally upon such trial, over the patrolman's objections, exhibits consisting of check stubs and record cards made by the attorney or his clerk. It does not appear that the notations on the record cards and check stubs were made under circumstances which rendered them admissible. The evidence was admissible, however, as bearing upon the credibility of the witnesses who had made the entries and justified the Commissioner in

completely rejecting testimony of the attorney and his former clerk which was inconsistent with the notations. Roge v Valentine, 280 N.Y. 268, 20 N.E.2d 751, 280 N.Y. (N.Y.S.) 268, 1939 N.Y. LEXIS 1316 (N.Y.), reh'g denied, 280 N.Y. 809, 21 N.E.2d 695, 280 N.Y. (N.Y.S.) 809, 1939 N.Y. LEXIS 1599 (N.Y. 1939).

The common-law rule that notations upon record cards and check stubs have no substantive or independent testimonial value against third parties has been changed by this section, so that now any writing or record made as a memorandum or record of any act, transaction, occurrence or event is admissible in evidence in proof of said act, transaction, occurrence or event if the trial judge finds that it was made in the regular course of any business and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. Roge v Valentine, 280 N.Y. 268, 20 N.E.2d 751, 280 N.Y. (N.Y.S.) 268, 1939 N.Y. LEXIS 1316 (N.Y.), reh'g denied, 280 N.Y. 809, 21 N.E.2d 695, 280 N.Y. (N.Y.S.) 809, 1939 N.Y. LEXIS 1599 (N.Y. 1939).

In action on canceled check by testator to defendant, entry on stub of decedent’s checkbook of word “loan” was inadmissible to show that decedent had made loan to defendant. Shea v McKeon, 264 A.D. 573, 35 N.Y.S.2d 962, 1942 N.Y. App. Div. LEXIS 4208 (N.Y. App. Div. 1942).

Memorandum of items of expenditure made by trustee on check stubs and vouchers were admissible to show that withdrawals by him were proper. In re Dyer's Will, 266 A.D. 712, 40 N.Y.S.2d 420 (N.Y. App. Div. 1943).

Check stubs bearing an endorsement indicating that check represented a loan were improperly received under CPA § 374-a since they were not related to an entry made in the regular course of business. In re Levi's Will, 3 Misc. 2d 746, 157 N.Y.S.2d 320, 1956 N.Y. Misc. LEXIS 1510 (N.Y. Sur. Ct. 1956).

75. Consignment data

Records showing delivery of packages to consignee, where proper foundation is laid, are admissible in evidence. Munro Athletic Products Co. v Universal Carloading & Distributing Co., 53 N.Y.S.2d 170, 1944 N.Y. Misc. LEXIS 2810 (N.Y. App. Term 1944).

76. Corporate books

In an action to impress a trust on a savings bank account, the minute book and the cash book of a congregation, as bearing upon the title to the bank account, are admissible in evidence. Zinaman v Stivelman, 246 A.D. 851, 285 N.Y.S. 20, 1936 N.Y. App. Div. LEXIS 9871 (N.Y. App. Div.), aff'd, 272 N.Y. 580, 4 N.E.2d 813, 272 N.Y. (N.Y.S.) 580, 1936 N.Y. LEXIS 1072 (N.Y. 1936).

On petition of executors to determine ownership of stock claimed by widow as inter vivos gift, corporate minute book was admissible, as record made in regular course of business. In re Maijgren's Estate, 84 N.Y.S.2d 664, 193 Misc. 814, 1948 N.Y. Misc. LEXIS 3646 (N.Y. Sur. Ct. 1948).

Minute book, reciting adoption of bylaws by corporation, are evidence of facts therein recited. Thistlethwaite v Thistlethwaite, 101 N.Y.S.2d 679, 200 Misc. 64, 1950 N.Y. Misc. LEXIS 2318 (N.Y. Sup. Ct. 1950).

77. Court records

Card identified as part of criminal index kept by trial justice was properly admitted in evidence as court minute and as record kept in regular course of business of court, where handwriting on card was identified as that of trial judge, in coram nobis to set aside proceeding to show that petitioner did not want counsel. People v Lance, 282 A.D. 992, 125 N.Y.S.2d 541, 1953 N.Y. App. Div. LEXIS 5638 (N.Y. App. Div. 1953).

78. Depositions

Administrative Code, authorizing Comptroller of New York city to examine claimant for injuries did not warrant administratrix of claimant, after his death, to read in evidence his deposition taken by Comptroller. Boschi v New York, 65 N.Y.S.2d 425, 187 Misc. 875, 1946 N.Y. Misc. LEXIS 2842 (N.Y. Sup. Ct. 1946).

79. Insurance files

Mail list, which purported to prove mailing of notice of cancellation of policy of insurance and which was made in regular course of defendant's business, was admissible to prove mailing of such notice. Schaefer v Fidelity & Casualty Co., 123 N.Y.S.2d 787, 203 Misc. 633, 1953 N.Y. Misc. LEXIS 2038 (N.Y. App. Term 1953).

Inspection reports, book entries and other data, excepting proofs of loss or statements signed or presented by plaintiff in connection with her claims for blasting damage to her home property, in files of insurer and pertaining to plaintiff's damage, would be hearsay and incompetent. Beasley v Huntley Estates at Ardsley, Inc., 25 Misc. 2d 43, 137 N.Y.S.2d 784, 1954 N.Y. Misc. LEXIS 1878 (N.Y. Sup. Ct. 1954), aff'd, 285 A.D. 887, 137 N.Y.S.2d 787, 1955 N.Y. App. Div. LEXIS 6011 (N.Y. App. Div. 1955).

Letters of insurance broker, authorized by insured to arrange settlements with insurers, were competent to show that policies were transferred to avoid estate taxes. Slifka v Johnson, 161 F.2d 467, 1947 U.S. App. LEXIS 3412 (2d Cir. N.Y.), cert. denied, 332 U.S. 758, 68 S. Ct. 57, 92 L. Ed. 344, 1947 U.S. LEXIS 1816 (U.S. 1947), .

80. Notary's certificate

The contents of a notarial certificate were proof under CPA § 374-a apart from CPA § 368 (now Negotiable Instr. Law 270). Title Guarantee & Trust Co. v Geller, 254 A.D. 574, 2 N.Y.S.2d 784, 1938 N.Y. App. Div. LEXIS 6613 (N.Y. App. Div. 1938).

Although entries in the notary's book were admissible to establish presentment of promissory note and demand for payment, any weight they might have was destroyed by the testimony of the notary on cross-examination to the effect that he had no personal knowledge of the actual presentment. Littmann v Goldstein, 255 A.D. 540, 8 N.Y.S.2d 490, 1938 N.Y. App. Div. LEXIS 4798 (N.Y. App. Div. 1938).

81. Payrolls

Payrolls are admissible in evidence. Booth & Flinn Co. v Andrews, 249 A.D. 893, 292 N.Y.S. 527, 1937 N.Y. App. Div. LEXIS 10087 (N.Y. App. Div. 1937).

82. Police files

Police blotter containing report of a policeman who did not see the accident but based his report upon hearsay statements of third persons, was inadmissible. Needle v New York R. Corp., 227 A.D. 276, 237 N.Y.S. 547, 1929 N.Y. App. Div. LEXIS 6414 (N.Y. App. Div. 1929), aff'd, 231 A.D. 811, 246 N.Y.S. 880, 1930 N.Y. App. Div. LEXIS 8004 (N.Y. App. Div. 1st Dep't 1930).

Police blotter entries, if based on the communication of a police officer, are properly admitted in evidence to show what he reported shortly after the accident. Trbovich v Burke, 234 A.D. 384, 255 N.Y.S. 100, 1932 N.Y. App. Div. LEXIS 10442 (N.Y. App. Div. 1932).

Police blotter inadmissible where no proper foundation was laid therefor. Amsden v Washington Bridge Express Lines, Inc., 248 A.D. 645, 287 N.Y.S. 855, 1936 N.Y. App. Div. LEXIS 6652 (N.Y. App. Div. 1936).

Police record 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).

In action by bowling alley patron against owners for assault by allegedly insane employee, for negligently employing and retaining him, memorandum of conversation, made by police officer,

between such officer and such employee, containing latter's admission that he had been arrested in Albany in 1950 "for same thing," was not admissible, not having been made in regular course of business. Vanderhule v Berinstein, 285 A.D. 290, 136 N.Y.S.2d 95, 1954 N.Y. App. Div. LEXIS 3318 (N.Y. App. Div.), amended, 284 A.D. 1089, 136 N.Y.S.2d 349, 1954 N.Y. App. Div. LEXIS 4634 (N.Y. App. Div. 1954).

In action for personal injury, it was prejudicial error to admit in evidence police report as affecting credibility of police officer, where it was based on hearsay statements obtained by him at scene of accident after its occurrence and did not purport to assert any fact of his own knowledge. Wilson v Bungalow Bar Corp., 285 A.D. 1191, 141 N.Y.S.2d 106, 1955 N.Y. App. Div. LEXIS 7116 (N.Y. App. Div. 1955).

Police report is admissible as a record made in the regular course of business where officer testified that at the scene of the accident he made an entry of what had transpired in his regulations-memorandum book, that he thereupon telephoned these facts to the lieutenant at the station house, and that at the end of his tour when he returned to the station house he looked over the report and signed it. Zaulich v Thompkins Square Holding Co., 10 A.D.2d 492, 200 N.Y.S.2d 550, 1960 N.Y. App. Div. LEXIS 10097 (N.Y. App. Div. 1st Dep't 1960)(The court did not pass upon admissibility of the memorandum book under CPA § 374-a (this section) it being admissible to rebut inference that officer's testimony was a recent fabrication).

Where both patrolmen's report and memorandum book were competent evidence to rebut inference attempted to be created by plaintiff's counsel that patrolmen's testimony was a recent fabrication, their exclusion constituted prejudicial error. Zaulich v Thompkins Square Holding Co., 10 A.D.2d 492, 200 N.Y.S.2d 550, 1960 N.Y. App. Div. LEXIS 10097 (N.Y. App. Div. 1st Dep't 1960).

Conclusion of officer; in pedestrian's action for injuries by automobile, police report, based on officer's interviews with witnesses, which he telephoned to station house, held admissible except officer's conclusion that driver failed to give pedestrian right of way. Skoller v Short, 35 N.Y.S.2d 68, 1942 N.Y. Misc. LEXIS 1610 (N.Y. City Ct. 1942).

83. —Speedometer tests

In prosecution for speeding, “Police Speedometer Test Certificate,” issued by garage certifying to test of police car speedometer, was inadmissible where test was not observed by arresting officer, and neither person who conducted test nor police sergeant whose name appears thereon as witness to test, were called by prosecution as witness. People v Boehme, 1 Misc. 2d 629, 152 N.Y.S.2d 759, 1955 N.Y. Misc. LEXIS 2127 (N.Y. County Ct. 1955).

Speedometer tests made by the Police Department are made in the regular course of business and when they were made pursuant to duty imposed by the Police Commissioner in conformity with duly constituted authority which duties were subject to supervision by superiors they were competent evidence under CPA § 374-a. 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).

84. Prison records

Penitentiary mail records, of letters passing to and between prisoners and defendant, were improperly received in evidence to show friendship between them, where none of entries were made by witness. People v Rubin, 286 N.Y. 56, 35 N.E.2d 649, 286 N.Y. (N.Y.S.) 56, 1941 N.Y. LEXIS 1474 (N.Y. 1941).

85. School records

Where school district claimed title by adverse possession to land purchased without deed from common grantor, record of school trustees as to such purchase was admissible. Tenpas v Uhl, 276 A.D. 641, 97 N.Y.S.2d 566, 1950 N.Y. App. Div. LEXIS 4935 (N.Y. App. Div. 1950).

In action against school district for personal injuries to infant’s hand which caught in classroom door, nurse’s report, showing names and addresses of students assigned to plaintiff’s classroom on date of accident, was not admissible solely because it was official report made in regular

course of events, and hearsay statements relating to happening of accident would be excluded. Dunfee v Board of Education, 141 N.Y.S.2d 633, 1955 N.Y. Misc. LEXIS 2710 (N.Y. Sup. Ct. 1955).

86. Ship’s log

Ship’s log admitted on issue of peril of sea and carrier’s negligence. Gelderman v Munson S. S. Line, 232 A.D. 776, 249 N.Y.S. 920, 1931 N.Y. App. Div. LEXIS 15094 (N.Y. App. Div. 1931).

87. State or governmental records

Where landlord sought to evict tenant, a welfare beneficiary, and tenant sought reformation of her deed of premises to landlord to include their oral agreement that she would convey house to him on condition that he pay her debts and permit her to live there rent free for life, and where he contended that the oral agreement was conditional upon noninterference from the Department of Housing, the records of the Department of Welfare containing statements made by him, without any such qualifications, that he would permit tenant to remain on the premises rent free for life were admissible. Kelly v Wasserman, 5 N.Y.2d 425, 185 N.Y.S.2d 538, 158 N.E.2d 241, 1959 N.Y. LEXIS 1440 (N.Y. 1959).

Admissibility of entry in government records. Sorblum v Travelers' Ins. Co., 240 A.D. 1012, 268 N.Y.S. 949, 1933 N.Y. App. Div. LEXIS 7901 (N.Y. App. Div. 1933).

Written records kept by employee of Department of Public Works as to repair of signs at railroad crossing are admissible in action for death of driver of automobile at grade crossing. Gelbin v New York, N. H. & H. R. Co., 62 F.2d 500, 1933 U.S. App. LEXIS 3774 (2d Cir. N.Y. 1933).

88. Tax data, reports and returns

Where state board in arriving at rates considered data concerning tax rates, such data held admissible under CPA § 374-a. Application of Lewiston, 3 A.D.2d 498, 162 N.Y.S.2d 458, 1957

N.Y. App. Div. LEXIS 5534 (N.Y. App. Div. 3d Dep't 1957), aff'd, 5 N.Y.2d 741, 177 N.Y.S.2d 719, 152 N.E.2d 674, 1958 N.Y. LEXIS 900 (N.Y. 1958).

On executor's petition to determine ownership of stock claimed by widow as gift, corporation's federal income tax report and state franchise tax return were admissible. In re Maijgren's Estate, 84 N.Y.S.2d 664, 193 Misc. 814, 1948 N.Y. Misc. LEXIS 3646 (N.Y. Sur. Ct. 1948).

A statement of defendant's tax return is merely a self-serving declaration and was not admissible under CPA § 374-a. Bernstein v Repatsky, 2 Misc. 2d 938, 157 N.Y.S.2d 403, 1956 N.Y. Misc. LEXIS 1772 (N.Y. App. Term 1956).

Opinion Notes

Agency Opinions

11. Insurance records

Printout of electronic insurance policy is admissible as evidence in New York State court proceeding, as long as court finds that such policy is true and accurate representation of electronic record. Insurance Department, Opinions of General Counsel, Opinion Number 08-04-05, 2008 NY Insurance GC Opinions LEXIS 73.

Research References & Practice Aids

Cross References:

This rule referred to in CLS Fam Ct Act §§ 418., 532.

Genetic marker and DNA tests; admissibility of records or reports of test results; costs of tests, CLS Fam Ct Act §§ 418., 532.

Federal Aspects:

Records of regularly conducted business activity as exception to hearsay rule in United States courts, USCS Court Rules, Federal Rules of Evidence, Rule 803(6).

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.

Records made in regular course of business in United States courts, 28 USCS § 1732.

Jurisprudences:

33 NY Jur 2d Criminal Law §§ 1938.– 1940.

35A NY Jur 2d Criminal Law § 4510.

44 NY Jur 2d Disclosure § 151.

44A NY Jur 2d Documents of Title § 78.

46 NY Jur 2d Domestic Relations §§ 744., 825., 834., 836., 851.

57 NY Jur 2d Evidence and Witnesses §§ 81., 109., 240., 260.

58 NY Jur 2d Evidence and Witnesses §§ 288., 348., 397., 421., 454., 458., 463., 464., 466.– 469., 471.– 478., 480., 483., 484., 486., 489.– 491., 495., 497., 536.

58A NY Jur 2d Evidence and Witnesses §§ 746., 800.

67A NY Jur 2d Inspection Laws § 10.

70 NY Jur 2d Insurance § 1770.

74A NY Jur 2d Landlord and Tenant § 428.

76 NY Jur 2d Malpractice § 310.

9A Am Jur Legal Forms 2d, Hospitals and Asylums, Form 136:62.

125 Am Jur Proof of Facts 3d 391., Proof of Admissibility of Tests Indicating Presence of Blood on Object.

16 Am Jur Proof of Facts 273., Computer Print-outs as Evidence.

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Computer print-outs of business records and their admissibility in New York. 31 Alb. L. Rev. 61.

Admissibility of investigational reports under business records statutes. 33 Alb. L. Rev. 251.

Evidence—admissibility of hospital records. 37 Alb. L. Rev. 579.

Use of Civil Aeronautics Board investigation materials in civil litigation. 32 Brook. L. Rev. 58.

The business records rule: repeated target of legal reform. 36 Brook. L. Rev. 241.

Use of tax returns in non-tax prosecutions. e>41 Brook. L. Rev. 580.

Admissibility of computer-kept business records. 55 Cornell L. Rev. 1033.

Should notice be a prerequisite to use of prima facie evidence? 9 N.Y.L. Sch. L. Rev. 785.

Scientific and medical evidence: a symposium. 13 N.Y.L. Sch. L. Rev. 607.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4518, Business Records.

2 Rohan, New York Civil Practice: EPTL ¶ 4-1.2; 6 Rohan, New York Civil Practice: EPTL ¶ 11-2.3.

1 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings §§ 3.06, 7.04.; 2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings §§ 19.12, 22.05, 25.13, 31.10; 4 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 65.07.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 36.07, 37.05; 3 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 43.17. .

Matthew Bender's New York CPLR Manual:

CPLR Manual § 16.09. Public documents; libraries; hospitals.

Matthew Bender's New York Practice Guides:

1 New York Practice Guide: Domestic Relations § 3.12; 3 New York Practice Guide: Domestic Relations § 37.06.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.03. Checklist: Examining Differences Between State and Federal Evidence Rules.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.04. Examining Evidentiary Rules as Applied in New York State and Federal Courts.

LexisNexis Practice Guide New York e-Discovery and Evidence § 15.09. Authenticating Various Types of ESI.

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LexisNexis Practice Guide New York e-Discovery and Evidence § 15.11. CHECKLIST: Admitting ESI.

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4 New York Practice Guide: Real Estate § 31.08.

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1 Bender's New York Evidence § 111.1. Judicial Notice of Scientific Facts, Properties of Matter, and Laws of Nature.

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3 Bender's New York Evidence § 149.06. Computer Print-Outs of Business Records.

3 Bender's New York Evidence § 149.07. Qualifications of Witness Introducing Records.

3 Bender's New York Evidence § 157.04. Present Sense Impression or Contemporaneous Declaration.

3 Bender's New York Evidence § 158.02. Admission of Self-Serving Declarations.

Annotations:

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Letters to or from customers or suppliers as business records under statutes authorizing reception of business records in evidence. 68 ALR3d 1069.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting physician to treating physician. 69 ALR3d 104.

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2 New York Trial Guide (Matthew Bender) §§ 30.10., 30.17., 30.19., 31.12., 31.13., 31.20.; 3 New York Trial Guide (Matthew Bender) §§ 40.01., 40.20., 40.50., 40.51., 40.52., 40.60.

Hierarchy Notes:

NY CLS CPLR, Art. 45

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