

A plaintiff sued a defendant for injuries sustained in an automobile collision. During the plaintiff's hospital stay, a staff physician examined the plaintiff's X-rays and said to the plaintiff, "You have a fracture of two vertebrae, C4 and C5." An intern who was accompanying the physician on her rounds immediately wrote the diagnosis on the plaintiff's hospital record.

At trial, the hospital records custodian testifies that the plaintiff's hospital record was made and kept in the ordinary course of the hospital's business.

Is the entry reporting the physician's diagnosis admissible?

- A. No, because no foundation has been laid for the physician's competence as an expert.
- B. No, because the physician's opinion is based upon data that are not in evidence.
- C. Yes, as a record of regularly conducted business activity.
- D. Yes, as a statement of then-existing physical condition.

Explanation:

Business records hearsay exception

(FRE 803(6))

Business record admissible if it was:

made at or near time of recorded event (or act, opinion, condition, diagnosis)

made by or based on information from someone with personal knowledge *and*

made & kept as a regular practice in the course of regularly conducted business activities

FRE = Federal Rule of Evidence.

Under the hearsay rule, out-of-court statements (eg, entries in a hospital record) are generally inadmissible when offered to prove the truth of the matter asserted therein (eg, patient has two fractured vertebrae). However, one [hearsay exception](#) applies to **business records** that were:

made **at or near the time** of the recorded event (or act, condition, opinion, diagnosis)

made by or based on information from someone with **personal knowledge** of that event
and

made and kept as a **regular practice** in the course of **regularly conducted business activities**.

Hospitals create and maintain patient records as a regular practice in the regular course of hospital business. They are created near the time of the recorded event (eg, patient exam) and are made by or based on information from someone with personal knowledge of the event (eg, physician, nurse, intern). As a result, the entry in the plaintiff's hospital record reporting the physician's diagnosis is admissible under the business records hearsay exception.

(Choices A & B) A witness is only qualified to provide expert testimony if the witness has specialized knowledge, skill, experience, training, or education in the relevant field. But here, there is no need to lay such a foundation for the physician's expertise since she is not giving expert testimony. And even if she were, the facts/data underlying her opinion need not be in evidence (or even admissible) if other experts would reasonably rely thereon.

(Choice D) Statements made by a *patient* (or other declarant) regarding his/her [then-existing physical condition](#) (eg, pain, bodily health) are excepted from hearsay. But here, the *physician's* diagnosis of the patient's condition does not fall within this exception.

Educational objective:

Business records are excepted from hearsay if they were (1) made near the time of the recorded event, (2) made by or based on information from one with personal knowledge, and (3) made and kept as a regular practice in the course of regular business activities.

References

Fed. R. Evid. 803(6) (business record).

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