

A plaintiff brought a wrongful death action against a defendant following the death of her husband. The plaintiff's husband was in a collision with the defendant and died one week later from a massive brain hemorrhage. The cause of the brain hemorrhage is disputed. At trial, the plaintiff called a medical expert who testified that, in her expert opinion, the husband's brain hemorrhage was caused by the collision and not a congenital defect in his artery. The expert further testified that her opinion was based in part on information contained in a private and nonroutine letter that a medical examiner had written for the husband's life insurance company after the husband's autopsy explaining his injuries and cause of death. The plaintiff now seeks to disclose the contents of the letter to the jury.

Is the jury entitled to hear this evidence?

- A. No, because the expert lacks personal knowledge of the autopsy.
- B. No, because the contents of the medical examiner's letter are hearsay and cannot be heard by the jury.
- C. Yes, because all facts relied upon in forming the bases of an expert opinion are automatically admitted into evidence.
- D. Yes, provided that its probative value in helping the jury evaluate the expert's opinion substantially outweighs its prejudicial effect.

Explanation:

Bases of expert's opinion testimony

(FRE 703)

Expert opinion testimony may be based on facts/data:

personally observed by expert

made known to expert *during* trial OR

made known to expert *before* trial if other experts would reasonably rely on fact/data when forming opinion

Otherwise inadmissible facts/data may be admitted if probative value in helping jury evaluate opinion substantially outweighs prejudicial effect

FRE = Federal Rule of Evidence.

Under Federal Rule of Evidence 703, an **expert witness's opinion** can be **based on facts or data** that the expert has:

personally observed

been made aware of during trial *or*

been made aware of before trial if other experts in the field would reasonably rely on those kinds of facts or data to form an opinion.

Here, the plaintiff's expert witness explained that her opinion was based, in part, on information from the medical examiner's letter to the insurance company. Although the expert lacked personal knowledge of the husband's autopsy, other medical experts in this field would reasonably rely on information from a medical examiner to determine a person's cause of death. Therefore, the plaintiff's expert properly based her opinion on that letter **(Choice A)**.

However, the mere fact that the expert relied on the letter to form her opinion does not automatically make it admissible **(Choice C)**. The facts or data relied on by the expert **must be admissible** under the evidentiary rules. If not, then that information can be **disclosed to the jury only if** the court determines that its probative value in helping the jury evaluate the expert's opinion **substantially outweighs** its prejudicial effect.

Here, the contents of the medical examiner's letter falls within the rule against hearsay,* which generally bars the admission of out-of-court statements offered to prove the truth of the matter asserted therein—here, the cause of the brain hemorrhage. But the statement may nevertheless be disclosed, provided that its probative value substantially outweighs its prejudicial effect **(Choice B)**.

*The hearsay exceptions for [public records](#) and [business records](#) do not apply to the medical examiner's letter because it was private and not made and kept as a regular practice in the course of regularly conducted business activities (ie, nonroutine).

Educational objective:

If an expert opinion relies on otherwise inadmissible facts or data, then that information may be disclosed to the jury only if the court determines that its probative value in helping the jury evaluate the expert's opinion substantially outweighs its prejudicial effect.

References

Fed. R. Evid. 703 (bases of expert's opinion testimony).

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