

A patient sued a doctor for medical malpractice for allegedly prescribing an incorrect medication, causing the patient to undergo substantial hospitalization. When the doctor learned of the medication problem, she immediately offered to pay the patient's hospital expenses. At trial, the patient offers evidence of the doctor's offer to pay the costs of his hospitalization.

Is evidence of the doctor's offer admissible?

- A. No, because it is an offer to compromise.
- B. No, because it is an offer to pay medical expenses.
- C. Yes, although hearsay, as a statement against interest.
- D. Yes, as a nonhearsay statement of a party.

Explanation:

Offer of compromise v. Offer to pay medical expenses

	Admissibility	Rationale
Offer of compromise (FRE 408)	Inadmissible to: prove/disprove validity of disputed claim <i>or</i> impeach party through prior inconsistent statement or contradiction	Settlement of disputes
Offer to pay medical expenses (FRE 409)	Always inadmissible to prove liability for injury	Assistance to injured persons

FRE = Federal Rule of Evidence

Public policy encourages assistance of injured persons. As a result, Federal Rule of Evidence 409 renders evidence that a party has paid or **offered to pay medical**, hospital, or similar expenses **inadmissible** to prove **liability for an injury**. Therefore, evidence of the doctor's offer to pay the patient's hospital costs cannot be admitted for this purpose.

(Choice A) The doctor did not make a compromise offer because her statement was not intended to avoid or end a claim asserted against her. But even if she had, the offer would only be inadmissible to (1) prove or disprove the validity or amount of the claim or (2) impeach her by an inconsistent statement or contradiction if there was an actual dispute between the parties when she made the offer.

(Choice C) **Statements against interest**—eg, statements that exposes the declarant to civil liability—are excepted from the hearsay rule when the declarant is **unavailable** as a witness. Since there is no indication that the doctor is unavailable, this hearsay exception does not apply. Additionally, no hearsay exception is necessary here since the doctor's statement was made by a party-opponent.

(Choice D) Out-of-court statements made by a party-opponent and offered against that party are excluded from the rule against hearsay (ie, are **nonhearsay**). But since the doctor's statement here was an offer to pay the patient's hospital expenses, it is inadmissible despite being nonhearsay.

Educational objective:

Evidence that a party paid or offered to pay medical, hospital, or similar expenses is inadmissible to prove liability for an injury.

References

Fed. R. Evid. 409 (offers to pay medical expenses).

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