

A plaintiff sued a ladder manufacturer for injuries he suffered to his neck and back when a rung of the ladder on which he was standing gave way. When the plaintiff's back and neck continued to be very sore more than two weeks after his fall, his treating physician had sent him to an orthopedist for an evaluation. Though the orthopedist did not treat the plaintiff, he diagnosed an acute cervical strain. At trial, the plaintiff has called the orthopedist to testify that, in response to the orthopedist's inquiry about how the plaintiff had injured his back, the plaintiff had told him, "I was standing near the top of a 15-foot ladder when I abruptly fell, landing hard on my back, after which the ladder toppled onto my neck."

Should the statement be admitted?

- A. No, because it relates to the inception or the cause of the injury rather than the plaintiff's physical condition.
- B. No, because it was not made to a treating physician.
- C. Yes, because it was made for the purpose of medical diagnosis or treatment.
- D. Yes, because the plaintiff is present and can be cross-examined about it.

Explanation:

Statement made for medical diagnosis or treatment

(FRE 803(4))

Hearsay exception for statement by declarant (available or not) that is:

made for & reasonably pertinent to medical diagnosis or treatment *and*
describes declarant's:

medical history

past or present symptoms or sensations *or*

inception or general cause of symptoms

FRE = Federal Rule of Evidence.

Under the rule against **hearsay**, an out-of-court statement is presumed unreliable and is generally inadmissible when offered for the truth of the matter asserted therein. One **exception** to this rule applies to statements that are:

made for and reasonably pertinent to **medical diagnosis or treatment** *and*

describe the declarant's **medical history**, past or present **symptoms**, or the **inception or general cause** of those symptoms (**Choice A**).

There is **no requirement** that these statements be **made to a physician**, so statements to nurses, family members, ambulance drivers, etc. are admissible so long as they meet the above criteria (**Choice B**). Here, the plaintiff's statement to the orthopedist falls within this exception because the statement was pertinent to a medical diagnosis and described the inception or cause of his injuries. As a result, it should be admitted.

(Choice D) The plaintiff *is* present and can be cross-examined about the statement. And since a statement made for medical diagnosis or treatment is admissible regardless of the declarant's availability, this is not a basis for admitting the statement.

Educational objective:

One exception to the hearsay rule applies to statements that are (1) made for and reasonably pertinent to medical diagnosis or treatment and (2) describe the declarant's medical history, past or present symptoms, or their inception or general cause.

References

Fed. R. Evid. 803(4) (hearsay exception – statement made for medical diagnosis or treatment).

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