

A plaintiff sued her employer, alleging that poor working conditions had caused her to develop a stomach ulcer. At trial, the plaintiff's medical expert testified to the cause of the plaintiff's ulcer and stated that his opinion was based in part on information in a letter the plaintiff's personal doctor had written to the plaintiff's employer, explaining why the plaintiff had missed work. The plaintiff offered the doctor's letter to prove the cause of her condition.

Is the letter admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because the plaintiff's doctor is not shown to be unavailable.
- C. Yes, because it was relied upon by the plaintiff's medical expert.
- D. Yes, under the business records exception to the hearsay rule.

Explanation:

Hearsay is an out-of-court statement (eg, the doctor's letter) offered to prove the truth of the matter asserted therein (eg, the cause of the plaintiff's condition). An **expert witness's opinion** can be **based on a hearsay statement** if other experts in the field would reasonably rely on that statement to form an opinion. The expert witness can then testify as to that opinion—as the medical expert did here. But the **hearsay statement** itself is **inadmissible unless**:

it is **excluded or excepted** from the rule against hearsay *or*

its probative value in helping the jury evaluate the expert's opinion substantially outweighs its prejudicial effect.

The only hearsay exception raised in this question is for **business records**. But since the doctor's letter was not made and kept as a regular practice in the course of regularly conducted business activities (eg, providing medical treatment), it is not a business record under this exception **(Choice D)**. Nor is it otherwise excluded or excepted from the hearsay rule. And though the letter may help the jury evaluate the expert's opinion, it is unlikely that the letter's probative value *substantially* outweighs its prejudicial effect. Therefore, it is inadmissible.

(Choice B) Certain **exceptions** only allow a hearsay statement to be admitted if the declarant is unavailable. But since none of those exceptions apply to the doctor's letter, his availability is irrelevant.

(Choice C) An expert's mere reliance on a hearsay statement is not independently sufficient to admit that statement.

Educational objective:

Expert witness testimony may be based on a hearsay statement if other experts in the field would reasonably rely on it. But the statement itself is inadmissible unless (1) it is excluded or excepted from the hearsay rule or (2) 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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