

The beneficiary of a decedent's life insurance policy has sued the life insurance company for the proceeds of the policy. At issue is the date when the decedent first experienced the heart problems that led to his death.

The decedent's primary care physician has testified at trial that the decedent had a routine checkup on February 15. The physician then identifies a photocopy of a questionnaire, provided by the physician and completed by the decedent on that date, in which the decedent wrote: "Yesterday afternoon I broke into a big sweat and my chest hurt for a while." The beneficiary now offers the photocopy in evidence.

Should the court admit the photocopy?

- A. No, because the original questionnaire has not been shown to be unavailable.
- B. No, because the statement related to past rather than present symptoms.
- C. Yes, as a business record.
- D. Yes, as a statement for the purpose of obtaining medical treatment.

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 (eg, a writing) is presumed unreliable and is generally inadmissible when offered to prove the truth of a 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 B**).

Such statements are deemed reliable because patients have an incentive to be truthful in order to receive proper medical care.

Here, the decedent noted his physical symptoms in the physician's medical questionnaire. And the decedent's statement about his sweating and chest pains was clearly made to obtain medical diagnosis and treatment. Therefore, the *questionnaire* is admissible as a statement made for this purpose. And under the **best evidence rule**, a duplicate is generally admissible to the same extent as the original writing—regardless of whether the original is available (**Choice A**). Therefore, the *photocopy* of the questionnaire is admissible.

(Choice C) For a record to be admissible under the **business records hearsay exception**, the record must have been made and kept as a regular practice in the course of regularly conducted business activities. Here, the record was made by the decedent—not the physician (or other hospital employee) as a regular practice in the regular course of medical activities. As a result, this exception does not apply.

Educational objective:

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

References

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

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