

8.43. Statement Made for Medical Diagnosis or Treatment

A statement made by a declarant to a health care professional for purposes of medical treatment and diagnosis which describes medical history, or past or present symptoms, pain or sensations, or their general cause, and is germane to diagnosis or treatment is not excluded by the hearsay rule even though the declarant is available to testify.

Note

This formulation is derived from several Court of Appeals decisions.

In *Davidson v Cornell* (132 NY 228, 237-238 [1892]), the Court recognized a hearsay exception for statements by a person to his or her physician “indicating pain or distress or expressive of the present state of his feelings,” which were made for purposes of treatment and diagnosis. The basis for this exception was the existence of a “strong inducement for the patient to speak truly of his pains and sufferings.” (*Id.* at 237.) However, statements relating to past pain and suffering were not within this exception. (*Id.*)

Three recent decisions of the Court of Appeals, *People v Ortega* (15 NY3d 610, 617-620 [2010]), *People v Duhs* (16 NY3d 405, 408 [2011]) and *People v Spicola* (16 NY3d 441, 451 [2011]), broadened the scope of the exception as initially recognized in *Davidson*.

In *Ortega*, the Court held that a patient’s statements as made to medical staff about the cause of his or her injuries, “domestic violence,” and the need for a “safety plan” were admissible as they were relevant to treatment and diagnosis. Thus, in the context of domestic violence and sexual assault cases, the Court of Appeals has recognized as a general proposition that how a patient was injured is germane to diagnosis and treatment because it concerns not only how to treat physical injuries, but also whether and what psychological and trauma issues need to be medically addressed and the development of a safety plan upon discharge. (*See People v Ortega*, 15 NY3d at 617.) Further, the Court of Appeals has observed that in a domestic violence case, statements by the victim to a health care professional regarding a victim’s abuser can be relevant to physical and psychological remediation. (*See People v Ortega*, 15 NY3d at 617-620.) The Court has not specifically addressed whether the declarant’s identification of the individual who caused his or her injury is germane to treatment in other situations.

In *Duhs*, the Court held a child's statement to a pediatrician concerning the cause of his injuries was admissible as it was relevant to treatment and diagnosis.

In *Spicola*, the Court held a statement by a teenage boy to a nurse practitioner at a child advocacy center describing how he was sexually abused six to seven years before was admissible as it was germane to treatment and diagnosis. These statements were admissible "as an exception to the hearsay rule" as they were prompted by the "strong inducement for the patient to speak truly." (See *People v Duhs*, 16 NY3d at 408; *People v Spicola*, 16 NY3d at 451.)

Care need be taken that the statement is germane to diagnosis and treatment, and thus admissible. In *Williams v Alexander* (309 NY 283, 288 [1955] [emphasis and citations omitted]), for example, the Court explained:

"In some instances, perhaps, the patient's explanation as to how he was hurt may be helpful to an understanding of the medical aspects of his case; it might, for instance, assist the doctors if they were to know that the injured man had been struck by an automobile. However, whether the patient was hit by car A or car B, by car A under its own power or propelled forward by car B, or whether the injuries were caused by the negligence of the defendant or of another, cannot possibly bear on diagnosis or aid in determining treatment. That being so, entries of this sort, purporting to give particulars of the accident, which serve no medical purpose, may not be regarded as having been made in the regular course of the hospital's business." (*Compare Benavides v City of New York*, 115 AD3d 518 [1st Dept 2014] [plaintiff's treating physicians did not need to know whether plaintiff jumped or was pushed off the fence in order for the physicians to determine what medical testing plaintiff needed], and *Nelson v Friends of Associated Beth Rivka Sch. for Girls*, 119 AD3d 536 [2d Dept 2014] [in action where the cause of child's fall was in issue, statement that child fell from monkey bars as opposed to a ladder was held germane to treatment].)

Where statements that are not admissible under this exception are contained in a medical record which is otherwise admissible, such statements must be redacted from the record before the record is received in evidence. (See *People v Ortega*, 15 NY3d at 622-623 [Pigott, J., concurring], citing *People v Johnson*, 70 AD3d 1188, 1191 [3d Dept 2010, Stein, J.])