Michigan Law Review

Volume 43 | Issue 2

1944

EVIDENCE - ADMISSIBILITY OF AGE IN HOSPITAL RECORD AS BUSINESS ENTRY

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EVIDENCE — ADMISSIBILITY OF AGE IN HOSPITAL RECORD AS BUSINESS ENTRY — Representing his birth date as 1866, deceased purchased from defendant insurance company in 1921 a policy on his life, which provided that in the event of any misrepresentation of age the insured's beneficiary would receive only that amount which a standard policy issued at his true age would stipulate for the permiums paid. In a suit by the beneficiary to recover on the policy, defendant attempted to prove that deceased was born at least as early as 1862. Among other evidence,[1] defendant introduced a hospital record of deceased's visit to a particular institution in 1936 where he represented his age to be 75 or as having been born in 1861. This proffered evidence was excluded by the trial court on the theory that admissions by the insured were not admissible against the beneficiary of the insured. *Held*, reversed, one justice dissenting.[2] The age of the patient in a hospital record is a medical fact and admissible as a "memorandum of an act, transaction, occurrence, or event" as provided by statute.[3] *Pollack v. Metropolitan Life Ins. Co.*, (C.C.A. 3d, 1943) 138 F. (2d) 123.

Under the common law, hospital records, when admitted at all, were admitted in evidence by the courts ordinarily as business entries exceptions to the hearsay rule.[4] Statutes in many states authorize the admission of hospital records

[1] Presented in the principal case also were issues of admissibility of other documents which indicated deceased's age, viz., naturalization papers of deceased and birth certificate of deceased's child. The scope of this note is limited to the admissibility of hospital records as evidence of age.

[2] Although Mr. Justice Magruder did concur in the reversal of this cause, his reversal was based on another point. As to hospital records, Justice Magruder declared, "The occurrence of event which is recorded in the hospital record is the birth of the patient, noted as having taken place seventy-five years previous. One of the qualifications of 28 U.S.C.A. § 695 is that it must be in the regular course of business to make a record of the event at the time it takes place 'or within a reasonable time thereafter.' It can hardly be said that this requirement is met in the present case" (p. 129).

[3] The federal statute here involved, known as the Model Act, follows: "In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter. All other circumstances of the making of such record or writing, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term 'business' shall include business, profession, occupation, and calling of every kind." 49 Stat. L. 1561 (1936), 28 U.S.C.A. (1940) 695.

[4] Clayton v. Metropolitan Life Ins. Co., 96 Utah 331, 85 P. (2d) 819 (1939); Schmidt v. Riesmenschneider, 196 Minn. 612, 265 N.W. 816 (1936).

Contra, Consolidated Coach Corp. v. Garmon, 233 Ky. 464, 26 S.W. (2d) 20

as business entries.[5] The courts commonly interpret these statutes to mean that only those portions of hospital records which refer to acts, transactions, occurrences, or events incident to medical treatment are admissible.[6] The majority of the court in the principal case considered the age of the patient to be a medical fact incident to such hospital treatment, and what authority there is

(1930); Mutual Benefit Health & Accident Assn. v. Bell, 49 Ga. App. 640, 176 S.E. 124 (1934).

Some courts have also placed the records of hospitals established and operated by a state or municipality in the official document exception to the hearsay rule; Stauffer v. Koch, 225 Mass. 525, 114 N.E. 750 (1917); Marx v. Parks, (St. Louis, Mo., Ct. App., 1931) 39 S.W. (2d) 570.

In Missouri the same rule applies to a private hospital under a statutory duty to keep hospital records; Kirkpatrick v. Wells, 319 Mo. 1040, 6 S.W. (2d) 591 (1928).

Other possibilities for admission of age in hospital records under the common law are the extrajudicial admissions and pedigree exceptions to the hearsay rule.

[5] With numerous variations business entries statutes consist mainly of two types—The Model Act and the Uniform Business Record as Evidence Act.

The Model Act is in force in the federal courts (see note 3 supra) and in seven other jurisdictions — Alabama, Connecticut, Maryland, Massachusetts, Michigan, New York and Rhode Island. See 40 MICH. L. REV. 1005 (1942).

The Uniform Business Records As Evidence Act provides:

"§ 1. Definition.— The term 'business' shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

"§ 2. Business Records.— A record of an act, condition or event shall, in so far as revelant, be competent evidence if the custodian or other qualified witness testifies to the identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition, or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." 9 UNIFORM LAWS ANNOTATED 264 (1942).

The Uniform Act has been adopted in California, Hawaii, Idaho, Minnesota, Montana, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Vermont and Wyoming. See 24 MINN. L. REV. 958 (1940); 40 MICH. L. REV. 1105 (1942); 32 ILL. L. REV. 334 (1937).

[6] Sadjack v. Parker-Wolverine Co., 281 Mich. 84, 274 N.W. 719 (1937) — notation in hospital record that the injury from which patient was suffering was sustained by a fall from a ladder was held inadmissible; Gile v. Hudnutt, 279 Mich. 358, 272 N.W. 706 (1937) — notation on hospital record "no damages were collected and 2 occupants of the other car were killed" was held inadmissible; Lykes Bros. S.S. Co. v. Grubaugh, (C.C.A. 5th, 1942) 128 F. (2d) 387 — conclusion that patient was "fit for Work" on the hospital chart was excluded; Beverly Beach Club v. Marron, 172 Md. 471, 192 A. 278 (1937) — statement that boy had cut his foot by broken glass was held inadmissible; Borucki v. MacKenzie Bros. Co., 125 Conn. 92, 3 A. (2d) 224 (1938) — entries admissible were limited to those which record details of diagnosis, treatment, condition of patient, and other facts helpful to an understanding of the medical or surgical aspects of the case, and should not include events or narrations such as those pertaining to the occasion of the patient's resort to the hospital, having no reference to his treatments or medical or surgical treatment in the hospital; Palmer v. John Hancock Mutual Life Insurance Co., 150 Misc. 669, 270 N.Y.S. 10 (1934) — dates of entry and discharge on the hospital record were admitted; see annotations in 144 A.L.R. 727 at 731 (1943).

on the point is in accord with the principal case.[7] It should be noted that an age stated on a hospital record is actually hearsay upon hearsay as even the entrant has no personal knowledge of the patient's birth. However, the two fundamental requirements for all exceptions to the hearsay rule — necessity and circumstantial guarantee of trustworthiness[8] — are present. The requirement of necessity is present in all cases of hospital records.[9] The statement of age on the hospital record is likewise trustworthy. There would appear to be no motive for the patient to lie, for he knows that his physician and hospital attendants rely upon the facts as shown on the hospital chart. Nor would there appear to be any reason for the attendant taking such age to transcribe it incorrectly; on the contrary, it would seem that the great responsibility resting upon the clerk's shoulders — knowing that insertion of incorrect data might mean the difference between life and death — and the further self serving motive of preserving his institution's reputation for saving lives, would militate against the possibility of any false entry by the clerk. In conclusion, it is submitted that, if the hospital's purpose in recording the patient's age is merely for identification purposes along with such other factors as color, nationality, religion, etc., hospital records of such age should not be admitted; but, if the purpose of ascertaining the age is to assist the physician and hospital attendants in treating the patient as the court found in the principal case, the record of age on the hospital chart should be admitted.

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[7] Pickering v. Peskind, 43 Ohio App. 401, 183 N.E. 301 (1930) — where age on hospital chart was admitted as evidence of plaintiff's age in a suit invoking the statute of limitations; as cited by the majority in the principal case, "Admissibility of Hospital Records as Business Entries," 38 MICH. L. REV. 219 (1939), where it is stated at 226, "It is settled, in those states that admit the records at all, that they are admissible to prove those things that come within the classification of facts. These have been held to include the age of the patient. . . . and other matters of this type."

[8] 5 WIGMORE, EVIDENCE, 3d ed., §§ 1421, 1422 (1940); 6 WIGMORE, EVIDENCE, 3d ed., § 1707 (1940).

[9] 6 WIGMORE, EVIDENCE, 3d. ed., § 1707 (1940); Hale, "Hospital Records as Evidence," 14 So. CAL. L. REV. 99 (1941).