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DIAGNOSING THE CHANGING STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

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Sixth Circuit Court of Appeals Clarifies Application of The Hearsay Exception For Statements Made In Connection With Medical Diagnosis or Treatment

By Jeffrey H. Chilton

The United States Court of Appeals for the Sixth Circuit has recommended for full text publication a decision with far reaching potential ramifications on the issue of what constitutes an exception to the hearsay rule regarding statements made for medical diagnosis or treatment. The case is *Field et. al. v. Trigg County Hospital et. al.* ___F.3d___(6th Cir.,2004)(Docket No. 02-6440/6517, rel'd 10/15/04).

This case provides a detailed analysis of Fed. R. Evid. 803(4), which states, in pertinent part, that the following statements are not excluded by the hearsay rule:

> Statements made for the purposes of medical diagnosis or treatment describing medical history, past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

The applicable Michigan rule of evidence for state court cases, MRE 803(4), is similar.

The factual background of the *Field* decision involved a claimed failure on the part of an emergency room physician to adequately diagnose and treat a venomous wound from the bite of a copperhead snake. The plaintiff's right foot was eventually surgically amputated. The trial led to a jury verdict in favor of the defendant

SECREST WARDLE NOTES:

Defendants, their counsel and insurers should determine early in discovery what, if any, statements from other health care professionals to the defendant physician or hospital support the medical care rendered. Such statements are not an exception to the hearsay rule when made to the defendant physician or medical institution staff. Consideration should be made to preserving such favorable testimony by way of sworn affidavit, de bene esse deposition or witness appearance at trial itself.

physician and hospital. During trial, over objection, the court allowed the defendant physician to testify regarding the substance of a teleconference he had with two physicians from Vanderbilt University Medical Center regarding the medical treatment of plaintiff's condition.

In *Field,* the Sixth Circuit vacated the verdict in favor of the defendant and has remanded the case for a new trial. In clarifying the exception to the hearsay rule for statements made as part of medical diagnosis and treatment, the Court stated that the rationale behind this exception is that statements made by an individual to physicians for purposes of diagnosis or treatment are considered exceptionally trustworthy because the declarant has a strong motive to tell the truth in order to receive proper care. As such, the exception to this hearsay rule is limited to statements made by the one actually seeking medical care and does not apply to statements between health care professionals regarding the patient's care. Having determined that the statements made to the defendant doctor by the physicians at Vanderbilt University regarding the plaintiff were impermissible hearsay, the Sixth Circuit concluded that a new trial was necessary in that the admission of such statements was highly prejudicial and were more than mere harmless error.

In light of this decision, careful consideration should be made by health care professionals, medical institutions and their counsel and insurers to determine early in a case whether there exists any contact with other health care professionals which support the defense of any particular matter. When such contact exists in a factual record, all necessary steps should be taken to preserve such testimony through sworn affidavit, de bene esse deposition or arranging for a live appearance at trial.

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