

# MEDICAL HEARSAY

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*COMPILED BY*



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## INTRODUCTION

This resource will provide a basis for understanding, which jurisdictions have adopted, verbatim or otherwise, an exception to the hearsay rule for statements made for purposes of medical diagnosis or treatment. Thirty-one states have adopted Federal Rule of Evidence 803(4); fourteen states have adopted some version of the rule; and five states continue to rely on common law. Additionally, much guidance can be provided in the case law of your particular jurisdiction for the application of the rule.

“Part I” is a basic breakdown of the states that have adopted the federal rule and those states that have not, whether because they have adapted their own version or because they rely on common law. “Part II” is a further breakdown of the states that have not adopted the federal rule but still provide a codified exception for medical hearsay. This section will show a breakdown of the elements of the rule, and which clauses have been adopted and/or adapted to fit the needs of your jurisdiction. “Part III” provides information on those five jurisdiction, which have not yet codified the exception for medical hearsay. The case law summaries are meant to be a starting point for your research and explanation of the general application of the rule.

### FEDERAL RULE OF EVIDENCE 803(4) ---

“The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

**(4) Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or 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.

**PART I: OVERVIEW OF STATES' ADOPTION OF FEDERAL RULE 803(4)**

STATES THAT ADOPTED THE FEDERAL RULE VERBATIM	STATES THAT DID NOT ADOPT THE FEDERAL RULE VERBATIM	
Alabama	California	Statutory Distinction
Alaska	District of Columbia	Common Law Jurisdiction
Arizona	Florida	Statutory Distinction
Arkansas	Illinois	Statutory Distinction
Colorado	Kansas	Common Law Jurisdiction
Connecticut	Louisiana	Statutory Distinction
Delaware	Maryland	Statutory Distinction
Georgia	Massachusetts	Common Law Jurisdiction
Hawaii	Michigan	Statutory Distinction
Idaho	Mississippi	Statutory Distinction
Indiana	Missouri	Common Law Jurisdiction
Iowa	New Hampshire	Statutory Distinction
Kentucky	New Jersey	Statutory Distinction
Maine	New York	Common Law Jurisdiction
Minnesota	Oklahoma	Statutory Distinction
Montana	Pennsylvania	Statutory Distinction
Nebraska	Rhode Island	Statutory Distinction
Nevada	South Carolina	Statutory Distinction
New Mexico	Vermont	Statutory Distinction
North Carolina	Virginia	Common Law Jurisdiction
North Dakota		
Ohio		
Oregon		
South Dakota		
Tennessee		
Texas		
Utah		
Washington		
West Virginia		
Wisconsin		
Wyoming		

**PART II: STATE ADAPTATIONS OF THE EXCEPTION FOR MEDICAL HEARSAY**

**PART II: STATE ADAPTATIONS OF FRE 803(4)**

State	Medical Hearsay Exceptions						Additions and/or Exceptions
	Statements made for purposes of medical diagnosis or	Statements describing medical history	Statements of past or present symptoms	Statements of pain or sensations	Statements of the general inception or general character of the cause or external source	Statements that are reasonably pertinent to diagnosis or treatment	
California	Y	Y	Y	Y	Y	Y	Exception applies only to statements made by minor victims under the age of 12 and describing any act, or attempted act of child abuse or neglect.
Florida	Y	Y	Y	Y	Y	Y	Exception applies only where statements were made by person seeking diagnosis or treatment or that person's legal guardian.
Illinois	Y	N	N	Y	Y	Y	"Statements made by the victim to medical personnel" --- There is no provision in the statute for medical history or past symptoms.
Kansas	Y	N	Y	Y	N	Y	Exception applies where statement was made to a physician consulted for treatment and the statements must be made in good faith. Medical history is not an exception and neither are statements regarding the cause or perpetrator of the injury.
Louisiana	Y	Y	Y	Y	Y	Y	"In connection with treatment"
Maryland	Y	Y	Y	Y	Y	Y	"In contemplation of treatment"
Michigan	Y	Y	Y	Y	Y	Y	"In connection with treatment"
Mississippi	Y	Y	Y	Y	Y	Y	Providing the court with discretion to affirmatively find that a statement was made under circumstances

							indicating trustworthiness, also covering emotional and mental health.
New Hampshire	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	Providing the court with discretion to affirmatively find that th a statement was made under circumstances indicating their trustworthiness.
New Jersey	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	“Statements made for good faith”
Oklahoma	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	Statements made of the general cause of character or external source are not admissible under this rule.
Pennsylvania	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	“In contemplation of treatment”
Rhode Island	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	“But not including statements made to a physician consulted solely for the purposes of preparing for litigation or obtaining testimony for trial.”
South Carolina	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	“Provided, however, that the admissibility of statements made after commencement of the litigation is left to court’s discretion.”
Vermont	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>N</b>	Statements made as to the general cause of character or external source are not admissible as well as there is no provision for statements that are reasonably pertinent to treatment.

**PART III: COMMON LAW JURISDICTIONS**

<b>State</b>	<b>Case Summary</b>
<b>District of Columbia</b>	The exception applies if the statement is “reasonably pertinent” to diagnosis and the declarant is “the patient, or someone in a special relationship with the patient such as a parent.” <i>Barrera v. Wilson</i> , 668 A.2d 871, 873 (D.C. 1995). Courts have allowed admission of statements identifying perpetrators in cases of nonsexual and sexual abuse of a minor by a member of their family. <i>Galindo v. United States</i> , 630 A.2d 202 (D.C. 1993) Courts have suggested that admission of statements identifying perpetrators may be acceptable outside of the child abuse context so long as they are made for the purposes of diagnosing and treating the “psychological and emotional consequences” of the injury. <i>Jones v. United States</i> , 813 A.2d 220, 226 (D.C. 2002). The rule has been relied on to allow admission of statements to physicians, nurses and psychologists. The exception does not apply to when the examination was made for the purposes of eliciting evidence for trial, not medical treatment. <i>Sullivan v. United States</i> , 404 A.2d 153, 158 (D.C. 1979)
<b>Massachusetts</b>	The medical hearsay exception only applies to statements made to physicians’ agents in the context of treatment or diagnosis. Statements provided to physician for diagnosis and treatment is included in hospital records. <i>Bouchie v. Murray</i> , 376 Mass. 524, 381 N.E. 2d 1295 (1978). Statements of fault are generally inadmissible. <i>Morrissey v. Ingham</i> , 111 Mass. 63 (1872). Statements made by sexual assault victims to physicians regarding the identity of their attacker as well as the circumstances of the attack are generally admissible at common law. <i>Glover v. Callahan</i> , 299 Mass. 55, 12 N.E.2d 194 (1938).
<b>Missouri</b>	“Statements made to a physician, or contained in hospital records, even if characterized as medical history, are admissible insofar as such statements are reasonably pertinent to diagnosis and treatment.” <i>Lauck v. Price</i> , 289 S.3d 694 (Mo. App. E.D. 2009)(citing <i>Morrow v. Fisher</i> 51 S.W. 3d 468, 472 (Mo.App. S.D. 2001)).
<b>New York</b>	New York Courts have admitted medical hearsay under a variety of fact specific circumstances: (1) testimony of a gynecologist was relevant to treatment and diagnoses; <i>People v. Torres</i> , 572 N.Y.S.2d 269 (N.Y.App.Div. 1991) (2) hearsay statements contained within hospital records are part of the medical hearsay exception; <i>People v. Archie</i> , 561 N.Y.S.2d 1000 (N.Y.App.Div.1990) (3) testimony by a deceased victim; <i>People v. James</i> , 797 N.Y.S.2d 129 (N.Y.App.Div. 2005) (4) testimony by a domestic violence victim as a “prompt outcry,” <i>People v. Archbold</i> , 835 N.Y.S.2d 577 (N.Y.App.Div. 2007).  New York Courts have NOT allowed: (1) statements made outside of an examination setting; <i>People v. Ballerstein</i> , 860 N.Y.S.2d 718 N.Y. App. Div.4.Dept. 2008). (2) victim’s notes from a counseling session do not constitute an exception to medical hearsay. <i>People v. Bendetto</i> , 744 N.Y.S.2d 92 (N.Y.App.Div 2002).
<b>Virginia</b>	Exception to the hearsay rule, which permits a physician to testify to a patient’s statements concerning his “past pain, suffering and subjective symptoms” to show “the basis for the physician’s opinion as to the nature of the injury or illness. ( <i>Cartera v. Commonwealth</i> , 219 Va. 516, 518, S.E.2d 784, 786 (Va. 1978). The Court has held that a child's statement to the psychologist went “beyond a recital of ‘past pain, suffering and subjective symptoms’ ”. <i>Jenkins v. Commonwealth</i> , 254 Va 333, 339, 492 S.E.2d 131, 134 (Va. 1997).