

9-1-1997

## EVIDENCE Hearsay: Allow the Admission of Medical Reports as Nonhearsay

Heather Browning

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Heather Browning, *EVIDENCE Hearsay: Allow the Admission of Medical Reports as Nonhearsay*, 14 GA. ST. U. L. REV. (1997).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol14/iss1/11>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

## EVIDENCE

### *Hearsay: Allow the Admission of Medical Reports as Nonhearsay*

CODE SECTION:	O.C.G.A. § 24-3-18 (new)
BILL NUMBER:	HB 325
ACT NUMBER:	348
GEORGIA LAWS:	1997 Ga. Laws 945
SUMMARY:	The Act allows reports by medical or mental health practitioners to be admitted into evidence at trial as nonhearsay, provided the party intending to introduce the report gives the opposing party sixty days notice. The report will not go out with the jury as documentary evidence.
EFFECTIVE DATE:	July 1, 1997

### *History*

Prior to the passage of the Act, medical reports were excluded from evidence as hearsay. A bill to create an exception to the hearsay rule for these reports was introduced during the 1996 legislative session, but never came out of committee.<sup>1</sup> In the 1997 session, Representative Tom Bordeaux introduced a similar bill to create an exception to the hearsay rule. The purpose of the bill was intended to save time, money, and effort for the court system, the litigants, and the medical care provider by no longer requiring a provider to testify at trial.<sup>2</sup> The Act was modeled after the Georgia Worker's Compensation Statute.<sup>3</sup>

### *HB 325*

The Act amends Code section 24-3-1, relating to hearsay, by adding Code section 24-3-18.<sup>4</sup> The Act allows into evidence signed and dated reports in narrative form prepared by medical practitioners or mental health workers.<sup>5</sup> The Act recognizes the opposing party's right to cross-examine the person preparing the report and to provide rebuttal testimony.<sup>6</sup> The Act attempts to reduce the expense of litigation by

---

1. See Telephone Interview with Rep. Tom Bordeaux, House District No. 151 (Apr. 11, 1997) [hereinafter Bordeaux Interview].

2. See *id.*

3. See *id.*; O.C.G.A. § 34-9-102(e)(2) (1996).

4. O.C.G.A. § 24-3-18 (Supp. 1997).

5. *Id.*

6. *Id.*

eliminating the need to take the deposition and trial testimony of a physician who has examined a party.<sup>7</sup>

The bill was originally intended to amend chapter 7 of title 24, relating to authentication of writings, by adding Code section 24-7-10.<sup>8</sup> It provided that the following treating practitioners could provide a writing: a medical doctor, chiropractor, dentist, orthodontist, podiatrist, psychologist, marriage and family therapist, social worker, or professional counselor.<sup>9</sup>

The House Judiciary Committee offered a substitute to the bill that changed the list of practitioners who could provide a writing and allowed either an examining or treating practitioner to provide the writing.<sup>10</sup> The substitute allowed examining or treating practitioners, including physical or occupational therapists, to provide writings that were admissible into evidence, but disallowed social workers and professional counselors from providing admissible writings.<sup>11</sup> The House Committee substitute change, which included examining as well as treating providers among the list of practitioners, was included in the final version.<sup>12</sup>

The substitute further provided that the medical narrative shall be presented to the jury by reading it into the record in the manner that depositions are presented and shall not go out with the jury as documentary evidence.<sup>13</sup> The change was made at the request of a lobbyist who was concerned that the reports would go out with the jury.<sup>14</sup> The author did not object to this change because it was never his intent that the medical or mental health report go out with the jury.<sup>15</sup>

The version of the bill passed by the General Assembly was a Senate Committee substitute.<sup>16</sup> The original bill and first substitute were to be included in the Code section concerning authentication of writings;<sup>17</sup> the final version adds Code section 24-3-18.<sup>18</sup> The Act changes the list of practitioners who can provide nonhearsay writings, adding advanced practice nurse, social worker, and professional

7. See Bordeaux Interview, *supra* note 1.

8. HB 325, as introduced, 1997 Ga. Gen. Assem.

9. See *id.*

10. HB 325 (HCS), 1997 Ga. Gen. Assem.

11. *Id.*

12. O.C.G.A. § 24-3-18 (Supp. 1997).

13. *Id.*

14. See Bordeaux Interview, *supra* note 1.

15. *Id.*

16. HB 325 (SCS), 1997 Ga. Gen. Assem.

17. HB 325, as introduced, 1997 Ga. Gen. Assem.; HB 325 (HCS), 1997 Ga. Gen. Assem. The Code section on writings in general is O.C.G.A. § 24-7-1 (1992).

18. O.C.G.A. § 24-3-18 (Supp. 1997). Representative Bordeaux agreed that the Act seemed to fit better in that Code section. Bordeaux Interview, *supra* note 1.

counselor.<sup>19</sup> The additions were intended to make the statute operate in the same manner and include the same practitioners that the Worker's Compensation Statute includes.<sup>20</sup>

The bill was introduced by Representative Tom Bordeaux as a time and expense saver.<sup>21</sup> Although he believes it will benefit plaintiffs more, it will also benefit defendants who pay for independent medical examinations.<sup>22</sup> The defendant will not have to pay an examiner to testify at trial because the defendant will no longer need to subpoena him to testify.<sup>23</sup> Instead, the report may be entered into evidence.<sup>24</sup>

### *Opposition to HB 325*

Representative Robert Reichert does not believe this bill will save money; he believes it is merely a cost-shifting mechanism.<sup>25</sup> No longer will the party offering the evidence pay for the time of the practitioner while he testifies at trial; now the opposing party will have to subpoena—and pay—the practitioner in order to cross-examine him.<sup>26</sup> He does not believe this Act will operate even-handedly between plaintiffs and defendants because defendants rarely conduct independent medical examinations.<sup>27</sup> Defendants can avoid that expense by cross-examining the plaintiff's witness.<sup>28</sup> Representative Reichert noted that the defendant has the right to cross-examine opposing witnesses and this Act will force the defendant to pay to use the right.<sup>29</sup> Representative Reichert introduced an amendment on the House floor to limit the application of this Act to those cases with an amount in controversy of under \$25,000.<sup>30</sup> He believed that if this Act had any value, it would be to limit the amount spent on deposition and live testimony in cases with relatively low dollar amounts at stake.<sup>31</sup>

---

19. O.C.G.A. § 24-3-18 (Supp. 1997). This version deleted physical or occupations therapist from the list of practitioners. *Id.*

20. *See* Bordeaux Interview, *supra* note 1.

21. HB 325, as introduced, 1997 Ga. Gen. Assem.; *see* Bordeaux Interview, *supra* note 1.

22. Bordeaux Interview, *supra* note 1.

23. *See id.*

24. *See id.*

25. Telephone Interview with Rep. Robert Reichert, House District No. 126 (Apr. 11, 1997).

26. *See id.*

27. *Id.*

28. *See id.*

29. *Id.*

30. *Id.*

31. *Id.*

The amendment passed in the House, but was removed on the Senate floor.<sup>32</sup>

*Heather Browning*

---

32. See Bordeaux Interview, *supra* note 1.