# Child Victims and the Medical Diagnosis and Treatment Hearsay Exception

**Author :** Jessica Smith

**Categories :** Evidence, Uncategorized

**Tagged as :** child victims, hearsay, hinnant, medical

**Date :** April 30, 2012

Child victim cases often present an array of challenging evidence issues. In a paper here I addressed many of those issues. One common question that folks contact me about is the admissibility of a child's hearsay statements under Evidence Rule 803(4). This rule creates a hearsay exception for statements made for purposes of medical diagnosis and treatment. An analysis known as a *Hinnant* test applies when this hearsay exception is at issue. *See generally* State v. Hinnant, 351 N.C. 277 (2000). Consider this post your *Hinnant* primer.

Rule 803(4) creates a hearsay exception for "[s]tatements 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." N.C.R. Evid. 803(4). Testimony admitted under this exception "is considered inherently reliable because of the declarant's motivation to tell the truth in order to receive proper treatment." *Hinnant*, 351 N.C. at 286. In *Hinnant*, the North Carolina Supreme Court held that two inquiries must be satisfied for hearsay evidence to be admissible under this exception: "First, the trial court must determine that the declarant intended to make the statement at issue in order to obtain medical diagnosis or treatment. . . . Second, the trial court must determine that the declarant's statements were reasonably pertinent to medical diagnosis or treatment." *Id.* at 289.

The satisfy the first prong, the proponent of the evidence "must affirmatively establish that the declarant had the requisite intent by demonstrating that the declarant made the statements understanding that they would lead to medical diagnosis or treatment." *Id.* at 287. When determining whether the requisite intent existed, the trial court considers "all objective circumstances . . . surrounding the declarant's statements." *Id.* at 288. Neither a psychological examination nor a voir dire of the child is necessary to determine whether the child had the requisite intent. State v. Carter, 153 N.C. App. 756, 760-61 (2002). Some factors the court should consider in determining whether a child had the requisite intent are:

- whether an adult explained to the child the need for treatment and the importance of truthfulness;
- with whom, and under what circumstances, the child was speaking;
- the setting of the interview; and
- the nature of the questions.

*Hinnant*, 315 N.C. at 287-88; *see also In re* Mashburn, 162 N.C. App. 386, 394 (2004); State v. Bates, 140 N.C. App. 743, 745 (2000). An examination that has a dual purpose can satisfy the first prong of the test, provided that one of the purposes is medical diagnosis and treatment. State v. Isenberg, 148 N.C. App. 29, 38 (2001). However, when the witness is interviewed solely for trial preparation, this prong of the test is not satisfied. *Hinnant*, 351 N.C. at 285.

As to the second prong of the test—that the statements were reasonably pertinent to medical diagnosis or treatment—cases hold that a child sexual assault victim's identification of the perpetrator is reasonably pertinent to medical diagnosis and treatment. *Isenberg*, 148 N.C. App. at 38-39; State v. Lewis, 172 N.C. App. 97, 105 (2005). As the courts have explained, this identification is pertinent to continued treatment of the possible psychological and emotional problems resulting from the offense.

*This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved. use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919-966-4119; or fax 919-962-2707.*

Statements made to an individual other than a medical doctor—such as to a family member—may qualify as statements made for the purpose of medical diagnosis or treatment if the *Hinnant* test is satisfied. State v. McGraw, 137 N.C. App. 726, 729 (2000); *see also* Commentary to N.C.R. Evid. 803 ("Under the exception the statement need not have been made to a physician. Statements to hospital attendants, ambulance drivers, or even members of the family might be included."). However, statements to such persons do not qualify if made after the declarant already has received initial medical diagnosis and treatment. *Hinnant*, 351 N.C. at 289; *see also* State v. Watts, 141 N.C. App. 104, 107 (2000). The courts reason that in this situation, "the declarant is no longer in need of immediate medical attention" and thus "the motivation to speak truthfully is no longer present." *Hinnant*, 351 N.C. at 289.

That's the basic law. Here are some cases on point:

**Statements Inadmissible:**

- *State v. Waddell*, 351 N.C. 413, 418 (2000) (statements to psychologist; interview occurred after the initial medical examination; child friendly room; leading questions; no evidence that child had a medical treatment motive or that anyone explained interview's medical purpose or the importance of being truthful).
- *State v. Hinnant*, 351 N.C. 277, 289–91 (2000) (statements to a psychologist about two weeks after the initial medical examination; no one explained the interview's medical purpose or the importance of being truthful; child friendly room; leading questions).
- *State v. Carter,* __ N.C. App. __, 718 S.E.2d 687 (2011) (statement to a social worker during "play therapy" sessions in child friendly room more than two weeks after an initial examination; no evidence child understood that sessions were for medical diagnosis or treatment; social worker did emphasize need for truth).
- *In re T.C.S.,* 148 N.C. App. 297, 303 (2002) (statements to social worker; no evidence that child had a treatment motive).
- *State v. Watts*, 141 N.C. App. 104, 108 (2000) (statement to a hospital nurse and two doctors three months after initial medical examination; no evidence that the child had a medical treatment purpose or that importance of truthful answers was explained).
- *State v. Bates*, 140 N.C. App. 743, 746–47 (2000) (statement to psychologist; no evidence of a treatment motive or explanation of the need for honesty; child friendly room; leading questions).
- *State v. McGraw*, 137 N.C. App. 726, 729 (2000) (statements to child's mother; no evidence of a treatment motive).

**Statements Admissible**

- *State v. Burgess*, 181 N.C. App. 27, 34-35 (2007) (statements to pediatric nurses before doctor's examination).
- *State v. Lewis*, 172 N.C. App. 97, 104–05 (2005) (statements to nurses immediately before a physical examination; children understood interviews' medical purpose; although they occurred in a child friendly room, room was in a medical center; identification of the perpetrator was pertinent to medical diagnosis and treatment).
- *In re Mashburn*, 162 N.C. App. 386, 393-95 (2004) ((1) statements to a nurse during a medical history interview; child had treatment motive; (2) victims' statements to a mental health professional who diagnosed them with a variety of mental health problems and recommended treatment were admissible).
- *State v. Thornton*, 158 N.C. App. 645, 650-51 (2003) (statements to a clinical social worker in interview conducted the same day as a physical examination; social worker explained the importance of being truthful; non-leading questions).
- *State v. Isenberg*, 148 N.C. App. 29, 36–39 (2001) ((1) statements to a pediatric nurse in a hospital; nurse was in a uniform and explained that the child would see a doctor for a physical examination and instructed her to be truthful; (2) child's statements to a doctor were admissible; examination occurred in a medical room with medical purpose).
- *State v. Stancil*, 146 N.C. App. 234, 242 (2001) (interviews in the hospital soon after the incident by a psychologist, a certified sexual assault nurse, and a pediatrician; child had a medical motive and returned to

*This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved. use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919-966-4119; or fax 919-962-2707.*

see the pediatrician days later due to pain).

- *In re Clapp*, 137 N. C. App. 14, 21-22 (2000) (statements to mother and doctor could have been admitted under this exception; child told her mother of incident that occurred that day and mother took her to a hospital emergency room).

*This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved. use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919-966-4119; or fax 919-962-2707.*