

10-1-1955

Workmen's Compensation—Medical Opinion Evidence

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Recommended Citation

Paul A. Foley, *Workmen's Compensation—Medical Opinion Evidence*, 5 Buff. L. Rev. 101 (1955).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss1/48>

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trates their reluctance to depart from the traditional prohibition against hearsay evidence.²⁰

Medical Opinion Evidence

A general rule of negligence law applicable to Workmen's Compensation proceedings is that where death from one cause is accelerated, however slightly, by another compensable cause, the death is compensable.²¹ In *Riehl v. Town of Amherst—Department of Highways*,²² decedent died of cancer, and his estate claims death benefits because the death certificate stated heart disease, a compensable injury for which benefits were being paid, was a contributing factor in the death. The court reversing the Appellate Division,²³ held, that the award was not supported by substantial evidence, because the attending physician during his testimony stated he could not prove any causal connection between cancer and heart disease.²⁴

A death certificate can have no greater probative force than the grounds upon which the testimony of the certifying doctor shows it to be based.²⁵ The majority applies this rule to the instant case and concludes that since the doctor admits he cannot prove a causal connection between cancer and heart disease, the evidence is speculative and not substantial.²⁶ The dissent disagrees as to the implication arising from the doctor's testimony and contends that there is substantial evidence to support an award.

The decision appears to be correct on the evidentiary point decided,²⁷ but it is suggested that on the substantive point of whether a causal connection may be found between cancer and heart disease, more adequate evidence could sustain an award.²⁸

20. 2 LARSEN, WORKMEN'S COMPENSATION LAW, §79.30.

21. 2 *Restatement of Torts* 431, 432; *McCahill v. New York Transportation Company*, 201 N. Y. 221, 94 N. E. 616 (1911).

22. 308 N. Y. 212, 124 N. E. 2d 287 (1954).

23. 283 App. Div. 196, 126 N. Y. S. 2d 594 (3rd Dep't 1953).

24. Conway and Dye, JJ. dissent and vote to affirm on the opinion of Halpern, J. in the Appellate Division.

25. *McCormack v. National City Bank of New York*, 303 N. Y. 5, 99 N. E. 2d 887 (1951).

26. See *Bye v. State Ins. Fund*, 279 App. Div. 1105, 112 N. Y. S. 2d 114 (3rd Dep't 1952), where medical testimony was held to be speculative that an industrial accident aggravated a preexisting cancerous condition, but cf. *Murphy's Case*, *infra*, Note 28.

27. *McCormack v. National City Bank of New York*, *supra*, Note 25.

28. *Murphy's Case*, 328 Mass. 301, 103 N. E. 2d 267 (1952), where heart disease was found to be a contributing cause of death by cancer.