



THE BASSETT BULLETIN™

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FILING THE PLAINTIFF'S MEDICAL BILLS

In some cases, a Plaintiff's medical records and bills tell us a completely different story than what the Plaintiff told us at his or her deposition. For example, the Plaintiff, at his deposition, may deny that he ever injured his back prior to this car accident. However, you could have medical records to show that the Plaintiff had back surgery two years before this accident from a work-related injury.

There may be great information contained in those records that a jury needs to hear. In order to do this, defense attorneys need to properly file the Plaintiff's records. On the other side, a Plaintiff's attorney files his client's medical records and bills to help prove his case.

Here are some important points and questions to cover with your attorney prior to trial.

1. What medical bills and records has the Plaintiff's attorney filed?

Each record must have an affidavit attached to it. This affidavit must be taken under oath and made by the person who is in charge of maintaining the records. Usually, this person is called the custodian of records. Make sure there is an itemized billing statement of the services and charges included in their affidavit. Your attorney should have the Plaintiff's affidavits no later than 30 days before trial.

2. What should I do if the Plaintiff's medical bills and records are unrelated to this accident or are unreasonable?

In this case, the defense attorney should file a controverting affidavit. This should be done at least 30 days after they receive a copy of the Plaintiff's affidavit, but at least 14 days before the first day of trial.

A controverting affidavit gives the Plaintiff's attorney reasonable notice of the basis on which the defense intends to show that the medical records or bills are unreasonable and/or unrelated to the accident at hand. For example, a Plaintiff may claim he needed surgery, but your expert doctor says surgery is not necessary. Your doctor then needs to sign an affidavit stating this opinion.

As with the Plaintiff's affidavit, the controverting affidavit must be taken before a person authorized to administer an oath and it must be made by a person who is qualified to controvert the Plaintiff's Affidavit. For example, if you have a consulting expert or a testifying expert, they should be the one who signs the affidavit.

On a side note, if you, or your attorney, believe that the Plaintiff's medical records will probably not be reasonably related to the incident, then you should consider hiring a consulting expert early on. As the Plaintiff's attorney begins to file his medical records, then you will have more time to have your consulting expert prepare and sign his controverting affidavit. If you wait until the Plaintiff's attorney files his records, then you will have only 30 days (or less if you are closer to trial) to find an expert, have him review all the medical records, and then prepare and sign his controverting affidavit.

3. What happens if the medical records or bills are not properly filed?

This rule applies to either party. If medical bills or records are not properly filed with the court, than the judge can rule that they are inadmissible and they will be kept out of evidence. However, one way around this is to call your doctor live to testify at trial. This can be very costly; however, it is a way out of this problem.

Keep in mind that only a doctor can testify to the reasonableness and necessity of medical charges. No one can call the custodian of records to testify to this.

Overall, it is very important to make sure that the medical records and bills are properly filed on both sides. If the defense does not comply with rules, then important information that you want a jury to see may never get there. On the other side, you want to hold Plaintiff's attorneys to a high standard when they file their records. If the medical records are not properly filed, than defense attorneys need to object to the Plaintiff's medical records coming in because they were not properly filed under the statute.

Lastly, medical bills and records do not provide conclusive evidence or even address the issue of causation. The Plaintiff's attorney is still going to need to make the link that the injuries found in the medical records were caused by the accident or incident at hand.

As trial approaches, you should discuss these questions with your attorney to make sure that everything is ready for trial. Or, if you receive medical records or bills that have been filed with a court, you will now have a better idea of what to look for.

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