

**CHAPTER 18.001 AFFIDAVITS, POST-HB 1693: WHAT CHANGED
AND WHAT REMAINS THE SAME**

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PROVING AND DISPROVING MEDICAL EXPENSES

Personal injury claims traditionally begin with proving up medical bills in order to help put the plaintiff back to where he/she was before being injured by a tortfeasor. From the date of plaintiff's injuries to the time of trial, plaintiff has paid or incurred medical expenses for his/her treatment, thus must present evidence showing that those medical bills were necessary and reasonable at the time and place either by expert testimony or by affidavit(s) that comply with Sections 18.001 & 18.002 of the Civil Practices & Remedies Code. However, the statute also provides for defendants to challenge the reasonableness and necessity of plaintiff's medical bills by filing controverting affidavits. This paper will discuss some basic considerations for both plaintiffs and defendants when proving and disproving medical expenses.

I. "REASONABLE AND NECESSARY"

The basic premise for recovering past medical expenses is that a plaintiff must prove (1) the expenses were necessary to treat the injury and were reasonable in amount, and (2) the expenses were paid or incurred by or on behalf of the plaintiff. *Dallas Ry. & Terminal Co. v. Gossett*, 294 S.W.2d 377, 382-83 (Tex.1956); *State v. Esquivel*, 92 S.W.3d 17, 21-22 (Tex.App.—El Paso 2002, no pet.); see *Jackson v. Gutierrez*, 77 S.W.3d 898, 902 (Tex.App.—Houston [14th Dist.] 2002, no pet.)(even in default-judgment hearing, plaintiff must prove expenses were reasonable and necessary); see, e.g., *Monsanto Co. v. Johnson*, 675 S.W.2d 305, 312 (Tex.App.—Houston [1st Dist.] 1984, writ ref'd n.r.e., 696 S.W.2d 558 (Tex.1985)(plaintiff introduced into evidence invoices showing that medical expenses were incurred but did not prove that expenses were reasonable and necessary). A plaintiff can prove that past medical expenses are reasonable and necessary either by expert testimony or by an affidavit of past expenses. *Ibrahim v. Young*, 253 S.W.3d 790, 808 (Tex.App.—Eastland 2008, pet. denied). When there are medical expenses attributable to a condition that was not caused by the defendant's conduct, the plaintiff must segregate the expenses caused by the defendant from expenses not caused by the defendant, usually by expert testimony. See *Texarkana Mem'l Hosp., Inc. v. Murdock*, 946 S.W.2d 836, 839-40 (Tex.1997).

A. So how do you prove up reasonable and necessary past medical expenses?

Section 18.001 of the Civil Practices & Remedies Code was enacted by the Legislature as a cost-effective way to prove up past medical bills. 18.001 eliminated the cost and need to call an expert to testify as to the reasonableness and necessity of medical expenses. However, 18.001 affidavits are not conclusive, thus can be controverted by competing affidavits as provided by the statute.

Section 18.001:

- (a) This section applies to civil actions only, but not to an action on a sworn account.
- (b) Unless a controverting affidavit is served as provided by this section, an affidavit that the amount a person charged for a service was reasonable at the time and place that the service was provided and that the service was necessary is sufficient evidence to support a finding of fact by judge or jury that the amount charged was reasonable or that the service was necessary. The affidavit is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.
- (c) The affidavit must:
 - (1) be taken before an officer with authority to administer oaths;
 - (2) be made by:
 - (A) the person who provided the service; or
 - (B) the person in charge of records showing the service provided and charge made; and
 - (3) include an itemized statement of the service and charge.
- (d) The party offering the affidavit in evidence or the party's attorney must serve a copy of the affidavit on each other party to the case by the earlier of:
 - (1) 90 days after the date the defendant files an answer;

- (2) The date the offering party must designate any expert witness under a court order; or
- (3) The date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.
- (d-1) Notwithstanding Subsection (d), if services are provided for the first time by a provider after the date the defendant files an answer, the party offering the affidavit for services provided by that provider on each other party to the case by the earlier of:
 - (1) The date the offering party must designate any expert witness under a court order; or
 - (2) The date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure.
- (d-2) The party offering the affidavit in evidence or the party's attorney must file notice with the clerk of the court when serving the affidavit that the party or the attorney served a copy of the affidavit in accordance with this section. Except as provided by the Texas Rules of Evidence, the affidavit is not required to be filed with the clerk of the court before the trial commences.
- (e) A party intending to controvert a claim reflected by the affidavit must serve a copy of the counteraffidavit on each other party or the party's attorney of record by the earlier of:
 - (1) 120 days after the date the defendant files its answer;
 - (2) the date the party offering the counteraffidavit must designate expert witnesses under a court order; or
 - (3) the date the party offering the counteraffidavit must designate any expert witness as required by the Texas Rules of Civil Procedure
- (e-1) Notwithstanding Subsection (e), if the party offering the affidavit in evidence serves a copy of the affidavit under subsection (d-1), the party offering the counteraffidavit in evidence or the party's attorney must serve a copy of the counteraffidavit on each other party to the case by the later of:
 - (1) 30 days after service of the affidavit on the party offering the counteraffidavit in evidence;
 - (2) The date the party offering the counteraffidavit must designate any expert witness under a court order; or
 - (3) The date the party offering the counteraffidavit in evidence must designate any expert witness as required by the Texas Rules of Civil Procedure.
- (f) The counteraffidavit must give reasonable notice of the basis on which the party serving it intends at trial to controvert the claim reflected by the initial affidavit and must be taken before a person authorized to administer oaths. The counteraffidavit must be made by a person who is qualified, by knowledge, skill, experience, training, education, or other expertise, to testify in contravention of all or part of any of the matters contained in the initial affidavit. The counteraffidavit may not be used to controvert the causation element of the cause of action that is the basis for the civil action.
- (g) the party offering the counteraffidavit in evidence or the party's attorney must file written notice with the clerk of the court when serving the counteraffidavit in accordance with this section.
- (h) If continuing services are provided after a relevant deadline under this section:
 - (1) a party may supplement an affidavit served by the party under Subsection (d) or (d-1) on or before the 60th day before the date the trial commences; and
 - (2) a party that served a counteraffidavit under Subsection (e) or (e-1) may supplement the counteraffidavit on or before the 30th day before the date the trial commences.
- (i) Notwithstanding Subsections (d), (d-1), (d-2), (e), (e-1), (g), and (h), a deadline under this section may be altered by all parties to an action by agreement or with leave of the court.

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