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Use of Plaintiff's Medical Records in Defense of an Auto Claim

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**"I'm not an Ambulance Chaser. I usually get there before the ambulance."
Melvin Belli**

Why do I need Plaintiff's medical records?

Obtaining plaintiff's medical records in a personal injury lawsuit arising out of a motor vehicle collision is critical to the defense. Sixty to eighty percent of adults have had low back pain and it is the second most common reason people go to the doctor.¹ About half of Americans have experienced neck pain.² At least half of those 50 and older have some evidence of rotator cuff damage.³ A British study recently found that nearly two thirds of women over 50 had experienced knee pain.⁴ More than 8 million Americans visit their doctors with complaints of headaches every year.⁵ Chances are the aftermath of the car wreck in question is not the first time Plaintiff has had treatment for the condition/body part alleged to be injured in that car wreck.

The car wreck defendant is forced by law- "The Eggshell Plaintiff Role," to take Plaintiff as it finds them, and can be held responsible for the ensuing damages, even if one plaintiff may be more damaged than another in the same circumstances. However the car wreck defendant is only responsible for the damages it causes. "You take the Plaintiff as you find him" works both ways. If the Plaintiff's medical history is known it can be used to prove that minimal or early treatment returned the Plaintiff to his pre-accident condition, or that Plaintiff was already so affected that the car wreck didn't actually result in any damages.

¹ Low Back Pain, U. MD. Med. Ctr, <http://umm.edu/health/medical/altmed/condition/low-back> pain (last visited July 1, 2016).

² Chris Woolston, Neck Pain, HEALTHDAY, <https://consumer.healthday.com/encyclopedia/back-care-6/backache-news-53/neck-pain-645900.html> (last visited July 1, 2016).

³ Jodi Helmer, Ouch! 5 Common Causes of Shoulder Pain, AARP (May 30, 2013), <http://www.aarp.org/health/conditions-treatments/infor-05-2013/common-causes-of-shoulder-pain.html>.

⁴ Eric Metcalf, Why Knee Pain Worsens with Age, EVERYDAY HEALTH, <http://www.everydayhealth.com/knee-pain-worsens-with-age.aspx> (last visited July 1, 2016).

⁵ Headache Statistics, I HATE HEADACHES, <http://www.ihateheadaches.org/headache-statistics.html> (last visited July 1, 2016).

How do I obtain Plaintiff's medical records?

"It's good to want things."

DS9, Vampire Diaries, Welcome Home Rosey Carmichael

Medical providers should be disclosed in response to *Tex. R. Civ. P. 194.2 (e) and (f)*. The records themselves can be obtained through Requests for Disclosures, *Tex. R. Civ. P. 194.2(j)*

A party may request disclosure of any or all of the following:

(j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are **reasonably related** to the injuries or damages asserted **or, in lieu thereof, an authorization** permitting the disclosure of such medical records and bills.

(emphasis added)

Typically a response to requests for disclosures generates a response consisting of medical records from **chosen** providers for treatment **since** the accident, and billing records only showing the amount charged. The former rarely reveals past treatment or problems with the same body parts. The letter does not give an accurate picture of what medical expenses will go to the jury and is an attempt to exaggerate the value of the case. Both have been screened by opposing counsel.

However, *Tex. R. Civ. P. 194.2(j)* actually gives the requestor the option of obtaining an authorization. The former rules arguably supported the requestor making the choice but this was changed in 1999. The defendant can change the wording of Rule 194.2(j) so as to request only an authorization. In *In re Soto*, 270 S.W.3d 732 (*Tex. App.--Amarillo 2008, orig. proceeding*), the defendant motorist served upon each plaintiff a request for disclosure asking for "[a]n executed copy of the attached authorization permitting the disclosure of Plaintiff's medical records and bills." The Plaintiffs, in their responses, changed the wording of the request to the language of *Tex. R. Civ. P. 194.2(j)*, and responded:

"[a]ll medical records and bills that are reasonably related to the injuries or damages will be filed by affidavit and copies will be furnished to Defendant's attorney of record."

None of the Plaintiffs executed an authorization. Defendants moved to compel and the trial court ordered "Plaintiffs [to] execute medical authorizations permitting defense counsel to obtain medical records ..." *Id. at 734*. Plaintiffs argued that the rule gave **them**

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