

Affidavits and Controverting Affidavits

Uses and Abuses

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Medical Records

- Hearsay if not proved up
- Hearsay exception – 803(6) if records were:
 1. made and kept in course of a regularly conducted business activity;
 2. it was the regular practice of the business activity to make the documents;
 3. the documents were made at or near the time of the event that it recorded; and
 4. the documents were made by a person with knowledge who was acting in the regular course of business.

Medical Records Affidavit

- Tex.R.Civ.E. 902(10)
- need to file at least 14 day prior to trial
- if don't file 14 days before or haven't obtained by affidavit, need witness to testify to the four criteria of Rule 803(6).

Medical Bills

- Obtain affidavit from office of medical provider showing charges incurred were reasonable and necessary
- Section 18.001 of CPRC sets out requisite language of affidavit
Evidentiary statute that accomplishes three things:
 - 1) allows for the admissibility, by affidavit, of evidence of the reasonableness and necessity of charges that would otherwise be inadmissible hearsay;
 - 2) permits the use of otherwise inadmissible hearsay to support findings of fact by the trier of fact; and
 - 3) provides for exclusion of evidence to the contrary, upon proper objection, in the absence of a properly filed controverting affidavit.

Castillo v. Am. Garrett Finishers Corp., 965 S.W.2d 646, 654 (Tex. App. - El Paso 1998, no pet.); *Beauchamp v. Hambrick*, 901 S.W.2d 747, 749 (Tex. App. - Eastland 1995, no writ).

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"Affidavits and Controverting Affidavits: Uses and Abuses"