



# Developments in Proving up Medical Damages

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## What Changed With the New Rules?

- ▶ 1. Deadlines
- ▶ 2. Supplementation
- ▶ 3. Notice
- ▶ 4. Causation?

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# What is Reasonable and Necessary?

## **NO CHANGE**

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Plaintiff must prove the expenses were necessary to treat, reasonable in amount, and expenses were paid and incurred.

### CPRC 18.001

- ▶ Eliminated the cost and need to call an expert live to testify.
- ▶ Done through an affidavit.
- ▶ Can be controverted by affidavit.
- ▶ Controverting affidavit negates the effect of the initial affidavit and forces the proponent to call expert testimony (or by other means) and operates to increase litigation cost.
- ▶ If not controverted, supports finding of fact and bars conflicting evidence.
- ▶ Does NOT conclusively establish amount of damages as a matter of law.
- ▶ Not limited to medical services, covers "services" generally.

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# DEADLINES

## ▶ Offering party –

- ▶ Must serve copy of the affidavit on the other party by the earlier of:
  - ▶ 90 days after the date the defendant files an answer;
  - ▶ The date the offering party must designate any expert witness under a court order; or
  - ▶ The date the offering party must designate any expert witness as required by the TRCP.

## ▶ IF.....

- ▶ 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 must serve copy of the affidavit on the other party by the earlier of:
  - ▶ The date the offering party must designate any expert witness under a court order; or
  - ▶ The date the offering party must designate any expert witness as required by the TRCP.

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# DEADLINES

## ▶ Controverting party –

- ▶ Must serve copy of counteraffidavit on party by the earlier of:
  - ▶ 120 days after the date the defendant files an answer;
  - ▶ The date the party offering the counteraffidavit must designate any expert witness under a court order; or
  - ▶ The date the party offering the counteraffidavit must designate any expert witness as required by the TRCP.

## ▶ IF.....

- ▶ If the party offering the affidavit in evidence serves a copy of same 90 days after the date the defendant files an answer, the party offering the counteraffidavit must serve the counter affidavit by the later of:
  - ▶ 30 days after service of the affidavit on the party offering the counteraffidavit in evidence;
  - ▶ The date the party offering the counteraffidavit must designate any expert witness under a court order; or
  - ▶ The date the party offering the counteraffidavit in evidence must designate any expert witness as required by the TRCP.

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2020 Car Crash Seminar session

"Chapter 18.001 Affidavits, Post-HB 1693: What Changed, and What Remains the Same"