

PRESENTED AT

The Car Crash Seminar

August 9-10, 2018

Houston, TX

Proving up Medical Records & Bills via 18.001

Sally Metcalfe

Proving up Medical Records & Bills via 18.001

In order to prove your client's damages at trial, you need evidence of medical records and medical bills. Medical records show the jury what your client has been through using notes, reports, photographs, x-rays and prescriptions. Medical bills show the costs associated with these treatments and are typically an anchor of monetary damages awarded your client. Currently, the best and most effective way to prove up your damages is by admitting the medical records and medical bills into evidence.

MEDICAL RECORDS

Without more, medical records are hearsay. However, they are excepted from the hearsay exclusion under Rule 803(6) if the records were:

- (1) made and kept in the 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.

You can obtain medical records with an affidavit using the form specified by TEX.R.CIV.E. 901(10). These need to be filed with the court at least 14 days prior to trial. If you have not obtained the records by affidavit, you can also move to admit them using a witness who can testify that the records are business records by laying the proper foundation and establishing the four criteria listed above. Then, the records may be admissible despite any hearsay objection.

MEDICAL BILLS

The typical method used to admit medical bills is by obtaining an affidavit from the office of the medical provider showing that the charges incurred were reasonable and necessary. Section 18.001 of the Civil Practice and Remedies Code sets out the requisite language of the affidavit.

The legislature enacted Section 18.001 of the Texas Civil Practice and Remedies Code to circumvent the hearsay problem and allow for an economical method of allowing medical records to come in via the business records exception to the hearsay rule. Section 18.001 is an evidentiary statute that accomplishes three things:

- (1) it allows for the admissibility, by affidavit, of evidence of the reasonableness and necessity of charges that would otherwise be inadmissible hearsay;
- (2) it permits the use of otherwise inadmissible hearsay to support findings of fact by the trier of fact; and

(3) it provides for exclusion of evidence to the contrary, upon proper objection, in the absence of a properly filed controverting affidavit.

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

Is it really that easy?

No – defense attorneys put up hurdles to this process in even the simplest of cases! Hence, Section 18.001 has been the subject of numerous fights in the courtroom and the appellate courts in an attempt by defense lawyers to keep the records and bills out of evidence.

1. STATUTORY LANGUAGE

Section 18.001 provides,

§18.001. AFFIDAVIT CONCERNING COST AND NECESSITY OF SERVICES

- (a) This section applies to civil actions only, but not to an action on a sworn account.
- (b) Unless a controverting affidavit is filed 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.
- (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 the records showing the service provided and charge made; and
 - (3) include an itemized statement of the service and charge.
 - (A) 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 at least 30 days before the day on which evidence is first presented at the trial of the case.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, § 3.04(a), eff. Sept. 1, 1987. Amended by Acts 2007, 80th Leg., R.S., ch. 978, § 1, eff. Sept. 1, 2007.

Section 18.001 allows for the submission of affidavits instead of live testimony so long as a copy of the affidavit and bills are served upon all parties at least 30 days before the trial date. TEX. CIV. PRAC. & REM. CODE §18.001(3)(d). If they are not served by the 30th day before trial, the Court can exclude them. *Nye v. Buntin*, 2006 WL 2309051 (Tex. App. – Austin 2006, no pet. h.).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Proving up Medical Records & Bills via 18.001

First appeared as part of the conference materials for the
2018 The Car Crash Seminar session
"Affidavits and Controverting Affidavits: Uses and Abuses"