

A Tip on Medical Records for the Innocent

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Courtesy and professionalism have been all the rage. That's as it should be— practice is hard enough without the jerks making it worse. We are always encouraged to stipulate where our clients' interests won't be unduly prejudiced; for example, it's usual to stipulate to the authenticity of medical records or medical bills without the need for a records custodian to show up at trial. But there are times when you need to be careful on stipulations.

One of these is in the admission of medical charts. Many lawyers seem to think that the entire medical chart ought to go into evidence in a personal injury action. I don't know what they're thinking it will accomplish; perhaps it's the pervasive fear of forgetting something. Surely all of the records don't need to be in evidence for a jury to award damages for personal injury— indeed, if it comes right down to it, *none* of them really needs to be admitted.

I suppose one reason that lawyers introduce all the medical records is to "prove" that the claimant actually received medical care as alleged, as well as to show how extensive that care was. Or maybe they think that they need to get records into evidence in order for treating physicians and experts to adequately testify.

So let's make one thing clear: you do **not** need to introduce your client's medical records in order to recover on a personal injury claim. Your client may testify that she was hospitalized, treated, and recovered, all without a single record. Her physician may testify (referring to his records to refresh recollection if he wishes) without the admission of his chart. And your expert may testify to having read the chart, with no need to admit it in your case-in-chief. Now I agree

this would be as unusual, as *some* medical records will usually come in, but my point is that inexperienced lawyers tend to introduce much more documentary evidence than they need to. They think they are being "thorough," but the truth is they are just dumping documents on the jury, and opening their clients up to unexpected surprises.

Clever lawyers will take advantage of this tendency. Indeed clever lawyers for the defense— and sometimes for the plaintiff— will encourage you to stipulate to the admission of the entire medical chart. This is normally done in the guise of courtesy, professionalism, and with a view towards making it all easy for the judge and the jury. The alternative, you may be told, is a grinding bit-by-bit introduction of separate pieces of the chart.

Don't ever agreed to the admission of the entire medical chart without knowing what is in it and why it is being introduced.

For starters, there is no evidentiary reason that an entire chart must be admitted. Each part, each page, technically stands on its own for purposes of relevance and admissibility. Medical records are, of course, also hearsay, and may or may not fit the exceptions under Utah Rules of Evidence 803(4), (6), or otherwise. Only one page of a hundred pages of nurses' notes may be relevant to the case; why, then, offer the other ninety-nine? There are excellent reasons not to do so.

First, you don't want to dump records on the jury that aren't necessary for them to read. It wastes everyone's time, and it's a sloppy practice. My former partner Jesse Trentadue calls this the "vomit" approach to litigation. No jury has the time or inclination to pore over several hundred pages of marginally-relevant medical records for no good reason.

Second, there are almost always hidden “gotchas” in the nursing notes or elsewhere deep in the chart that can haunt you. Once the chart is received into evidence, anything in it becomes fair game for closing argument or jury inspection. These include such things as unfortunate or intemperate comments by the patient to the nurses or doctors, providers’ irrelevant comments about the patient, direct or oblique references to insurance coverage, family problems, or a whole host of other things. I am always astonished by what a jury thinks is relevant.

Third, the meaning of much of what is in a medical chart will not be obvious to a lay jury. If it's not explained by a medical witness, then the jurors will likely come up with their own explanation.

So rather than agreeing to the admission of the entire chart, agree only on those portions that are pertinent and relevant. If you conclude the entire chart must come in, at least go through it carefully looking for “gotchas” and demand the redaction of those before the chart is received.

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