



## Vidaurri, Lyde, Rodriguez & Haynes, LLP

A South Texas Law Firm  
Edinburg • San Antonio

# Newsletter

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## In This Issue: Admissibility of Medical Records and Bills

### OUR FIRM

*Vidaurri, Lyde, Rodriguez & Haynes, LLP, is a full service insurance defense law firm representing insured individuals, professionals and companies across a broad spectrum of industries, including healthcare, transportation, retail, and manufacturing.*

### KEY POINTS

- Medical records include items created by a health care provider and that relate to the past, present or further physical or mental health of a given person.
- There are several ways to authenticate medical records and medical bills.
- Medical records and bills can be authenticated by live, in-court testimony or through a variety of affidavits or depositions on written questions (DWQs).

### NEWS

VLRH would like to congratulate Pablo Rivera on his admittance to the Texas Bar. Congratulations, Pablo!

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Medical records are a frequently used piece of evidence in personal injury cases. How medical records are admitted into evidence is governed by several procedural and evidentiary rules and at least one state statute.

The first step in dealing with the admissibility of medical records is determining what constitutes a medical record. Interestingly, there is no state statutory definition of what constitutes medical records. Without a state definition, it is helpful to look at the Health Insurance Portability and Accountability Act (otherwise known as "HIPAA"). A practical reading of HIPAA reveals that items created by a health care provider and that relate to the past, present or further physical or mental health of a given person are medical records. It is important to note that radiological studies (films) are "medical records."

As for the admission of medical records, the Texas Civil Practice & Remedies Code provides a method to (1) authenticate medical bills as business records and (2) prove up that the amounts charged are reasonable and necessary. This type of affidavit can be signed not only by the actual medical care provider, but also by a person in charge of the medical care provider's records. This type of affidavit must be filed thirty (30) days before evidence is first presented in the pertinent trial.

The Texas Rules of Evidence also provides a way to authenticate medical records. Because medical records can be authenticated with a business records' affidavit under Rule 902(10)(b), medical records are also subject to the same time requirements for filing as business record under Rule 902(10)(a) of the Texas Rules of Evidence. This requirement is fourteen (14) days prior to commencement of trial.

The Texas Rules of Civil Procedure include a procedure for authenticating documents that a party produces in response to a discovery response. For example, if a product produces certain documents, the opposing party can send a notice to that party that it intends to use those documents at trial. If the opposing party does not file objections, then generally those documents are authenticated.

There are two other popular methods for authenticating medical records and medical bills. One is live witness testimony from the custodian of records. The other is to serve a deposition on written questions on the custodian of records.