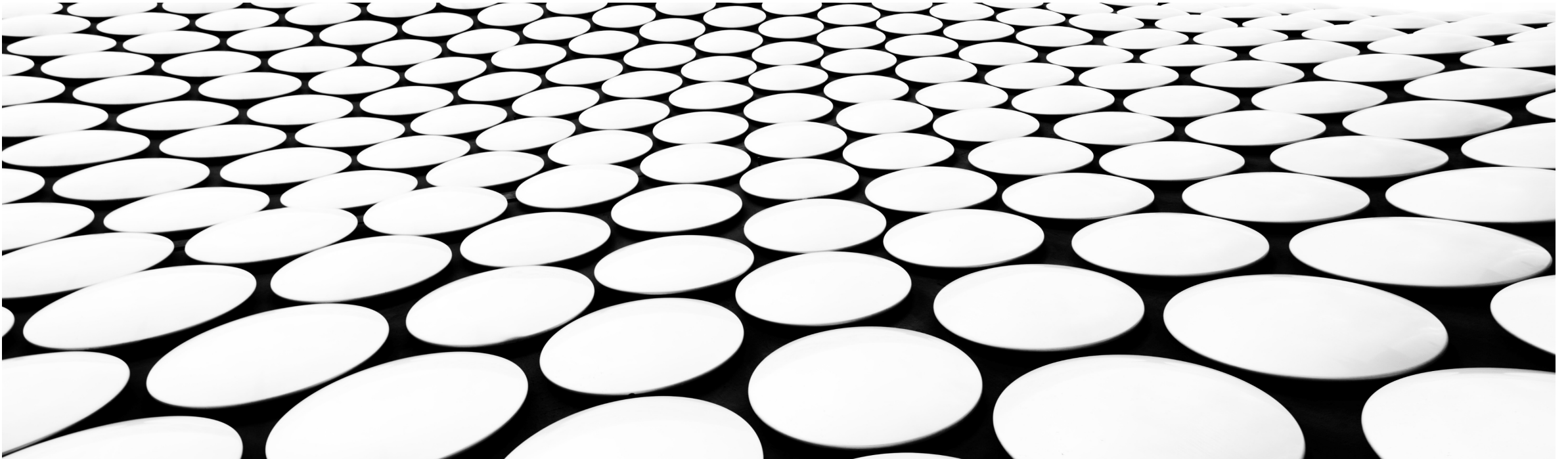


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# HOW MEDICAL RECORDS TESTIFY IN COURT

JUNE 2, 2021





# INTRODUCTION

JONATHAN F. LIEBERMAN, ESQ & FRED A. BALKIN, ESQ





# **MEDICAL RECORDS IN COURT**

R. ARON BENJAMIN, ESQ.



## HOW MEDICAL RECORDS ARE USED AT TRIAL: PRE-TRIAL

- Records are used as a basis of negotiation
- In Discovery, matching client experience during treatment with the medical records is key
- Client preparation for trial typically follows the timeline of their treatment.



# HOW MEDICAL RECORDS ARE USED AT TRIAL

- Your medical records speak as you would in court
- Needs Are: Bills, evaluations, treatment notes, releases, and your notes.
- More than just your words used in court
- We provide a summary as a guide to the finder of fact (judge or jury)

## MEDICAL AUTHORIZATION

TO: \_\_\_\_\_ [name of physician or other health care provider]

[PATIENT I.D. NO.: *if any*]

DATE OF BIRTH: \_\_\_\_\_

SOCIAL SECURITY NO.: \_\_\_\_\_

I, [patient name], of [address], do hereby authorize you to release to [name of chiropractor / physiotherapist / etc.] any and all information that may be requested pertaining to my physical and/or mental condition, including, but not limited to:

- (i) all records, reports, progress notes, and reports of diagnostic tests;
- (ii) all x-rays;
- (iii) all medical and/or legal opinions with respect to [patient name] injuries sustained from an accident, including a list of medical bills; and
- (iv) any other knowledge or information in your possession that pertains to the above.

I hereby acknowledge that this authorization shall be effective for up to [\_\_\_\_\_] years from the date of signing.

Dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Witness

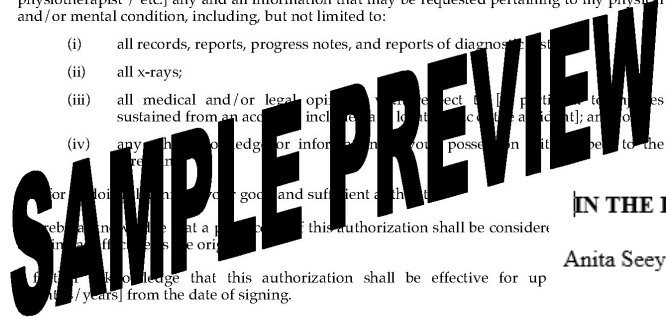
\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address



IN THE DISTRICT COURT OF MARYLAND FOR PRINCE MONTIMORE COUNTY

Anita Seeya Doctor

Plaintiff,

v.

Ima Goodguy

Defendant.

Civil No. \_\_\_\_\_

### NOTICE OF PLAINTIFFS' INTENT TO INTRODUCE MEDICAL RECORDS AND BILLS WITHOUT A PHYSICIAN'S SUPPORTIVE TESTIMONY

Pursuant to §10-104 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland, Plaintiffs hereby notifies the Defendant and the Court that they intend to offer into evidence the following medical records and bills, without supporting testimony from the treating medical care providers, as proof of the existence of Plaintiffs' medical condition, the opinions of the medical providers, and the necessity of the providing of medical treatment, as well as the amounts, fairness and reasonableness of the charges for the medical care received:

# HOW MEDICAL RECORDS ARE USED AT TRIAL: AS EVIDENCE

- As evidence, the medical records are usually Exhibit No. 1 in any trial... because it is the foundation of any plaintiff's recovery.
- The records are Testimonial, which means that opposing counsel has the right to dissect each and every page of your records... and you will not be there to defend any inconsistencies.
- Therefore, the more impactful your records, the better chance of having all meds awarded in a final judgment.



## MAKING MEDICAL RECORDS IMPACTFUL



- Touchstone reports are often our best tool in court
- Initial Evaluations, Re-Evaluations, Final Evaluations, Work Release Forms.

# MAKING MEDICAL RECORDS IMPACTFUL

- Patient narratives can be a double-edged sword!
- Good narratives (i.e. ones that match the progress of treatment and are tailored individually) are not only often quoted by us in court, but usually highlighted by judges when issuing a judgment.
- Bad narratives (or worse yet NO narrative) can sink a case.



# MAKING MEDICAL RECORDS IMPACTFUL



Watch for landmines... Address them with your patients **DURING** treatment



Gaps, increase in pain, new areas of concern arising mid-treatment





# **MEDICAL RECORDS IN COURT**

JAMIE ALVARADO-TAYLOR, ESQ.

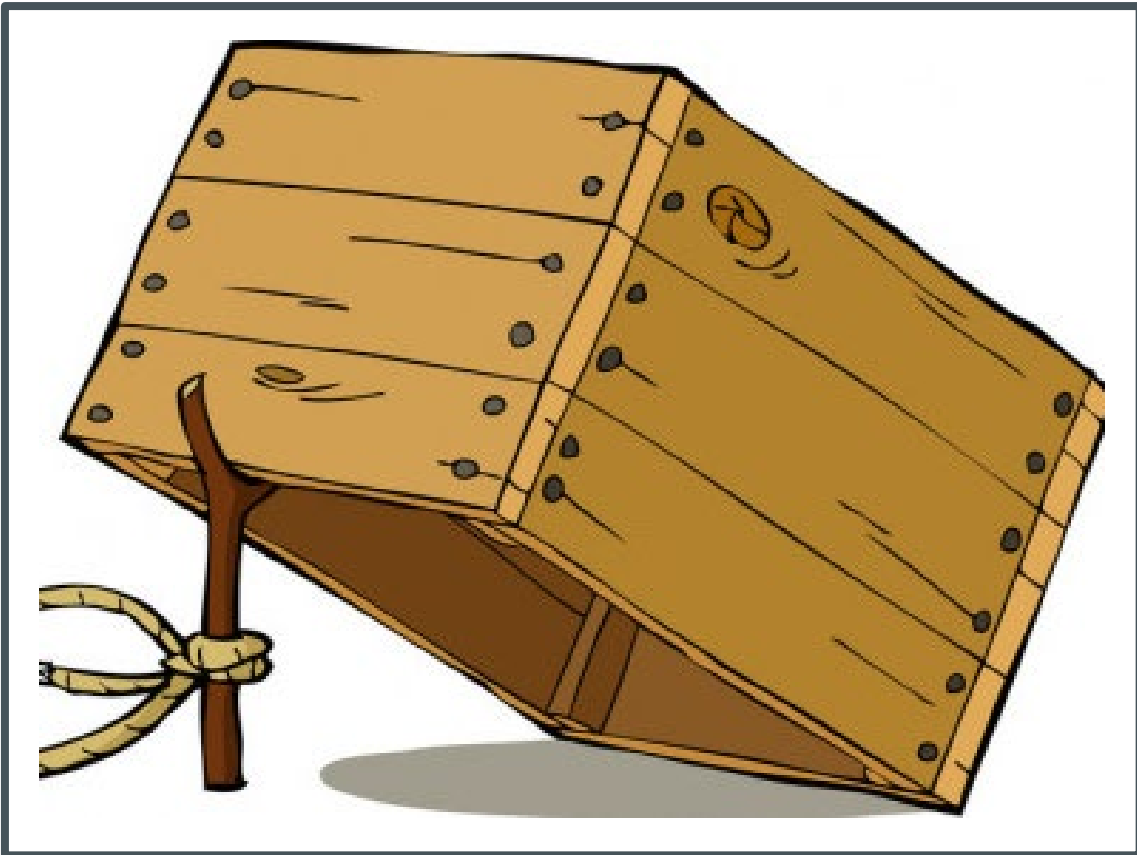


# HOW MEDICAL RECORDS ARE USED AT TRIAL

- Speak on behalf of provider
- Reviewed by attorney, opposing counsel, judge/jury for consistencies/inconsistencies
- Subjective findings and objective exam results are compared to one another



## TRAPS YOU CAN STUMBLE INTO AND HOW TO AVOID THEM



- Using the pain scale
- Typos and errors
- Incomplete or missing information
- Identical treatment notes for co-plaintiffs with different injuries/diagnoses

# WHAT CAN BOTH HELP AND HURT YOU AND YOUR RECORDS IN COURT

## ■ Helpful:

- Explanations/summaries in lay-man's terms when possible/appropriate
- Subjective complaint details for each treatment date
- If referral is given to specialist, should be noted in the records
- Legend when using acronyms or abbreviation.
- Explained absences should be documented
- Causation statement



# WHAT CAN BOTH HELP AND HURT YOU AND YOUR RECORDS IN COURT

- **Hurtful:**
  - Illegible handwritten notes
  - Typos/errors (so important we're mentioning it twice)
  - No explanations for additional dx or complaint that appears later in treatment
  - No causation statement





# **ACTIVITIES OF DAILY LIVING AND DISABILITY NOTES**

LAURA C. LLANSO, ESQ.





## IMPORTANCE FOR JUDGES

- One of the key aspects in a judge's determination for their final award
- Large portion of ADL testimony comes from patient on the witness stand
- Medical records can be hugely supportive as they are snapshots in time



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**MUNDANE → SPECIFIC**

**BE SPECIFIC**



- Mundane: reaching for coffee cup on high shelf causes shooting pain
- Specific: competitive bowler who missed competition due to back injury

## WAYS TO INCLUDE - CHECKLISTS

- Checklist for patients to complete
  - Completed at each major exam
  - Level of difficulty indicated
    - Unable to do / done with pain / no problems completing
    - Percent impacted
- Categories & examples for checklist:
  - Hygiene & routine (shower, hair/shaving, bathroom, sleep)
  - Family obligations (cooking, taking out garbage, chauffer duties)
  - Exercise (walks, soccer, gym)
  - Social (church, weekly events, volunteer work, personal enjoyment)



## WAYS TO INCLUDE – DISCUSSION POINTS & SUMMARY

- List examples of ADLs on examination paperwork
- Ask patient to provide specific examples of problems they are encountering
- Including patient discussions into records – follow up throughout treatment
- Crucial to evaluating true impact on a patient's life
- Trials often YEARS after treatment
- Important to see how long ADLs are impacted and at what level
- Support patient's live testimony

### Activities of Daily Living



## WORK STATUS & DISABILITY NOTES



- General deference by court
  - Most judges are usually deferential to determination of disability by medical providers
  - Especially understanding for physical jobs
  - Problems can arise when the justification is not present in the records

# WORK STATUS & DISABILITY NOTES



- **Solutions**
  - Discussion in records or patient completed form that indicates type of movement, lifting, etc. required at work (or travel required to get to work)
  - Explanation by medical provider of why work would aggravate injuries or hinder treatment
  - Begin with smaller recommended time off and re-evaluate
  - Potential for client to attempt to go back to work, resume lighter duty, with caveat that may need scale back if issues occur
  - Continual review and discussion of status of work once back at full capacity

## WORK STATUS & DISABILITY NOTES

- **Time off not feasible**
  - There will be patients who say they cannot take off time / bosses won't accept disability slip
  - Indicate in records discussion of potential repercussions of continuing to work
  - Indicate in records of client's justification for continuing to work/returning earlier than recommended
  - Continual review and discussion of issues or problems at work



## **WORK STATUS & DISABILITY NOTES**

- **Summary**
  - Increments helpful
  - Justification based on patient's job
  - Always able to re-evaluate based on patient's attempts at returning
  - Continuing issues noted throughout treatment

# Q&A

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