

**CHAPTER 18.001 AFFIDAVITS, POST-HB 1693 AND IN RE
ALLSTATE. WHAT IS LEFT?**

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PROVING AND DISPROVING MEDICAL EXPENSES

Personal injury claims traditionally begin with proving up medical bills in order to help put the plaintiff back to where he/she was before being injured by a tortfeasor. From the date of plaintiff's injuries to the time of trial, plaintiff has paid or incurred medical expenses for his/her treatment, thus must present evidence showing that those medical bills were necessary and reasonable at the time and place either by expert testimony or by affidavit(s) that comply with Sections 18.001 & 18.002 of the Civil Practices & Remedies Code. However, the statute also provides for defendants to challenge the reasonableness and necessity of plaintiff's medical bills by filing controverting affidavits. This paper will discuss some basic considerations for both plaintiffs and defendants when proving and disproving medical expenses.

I. "REASONABLE AND NECESSARY"

The basic premise for recovering past medical expenses is that a plaintiff must prove (1) the expenses were necessary to treat the injury and were reasonable in amount, and (2) the expenses were paid or incurred by or on behalf of the plaintiff. *Dallas Ry. & Terminal Co. v. Gossett*, 294 S.W.2d 377, 382-83 (Tex.1956); *State v. Esquivel*, 92 S.W.3d 17, 21-22 (Tex.App.—El Paso 2002, no pet.); see *Jackson v. Gutierrez*, 77 S.W.3d 898, 902 (Tex.App.—Houston [14th Dist.] 2002, no pet.)(even in default-judgment hearing, plaintiff must prove expenses were reasonable and necessary); see, e.g., *Monsanto Co. v. Johnson*, 675 S.W.2d 305, 312 (Tex.App.—Houston [1st Dist.] 1984, writ ref'd n.r.e., 696 S.W.2d 558 (Tex.1985)(plaintiff introduced into evidence invoices showing that medical expenses were incurred but did not prove that expenses were reasonable and necessary). A plaintiff can prove that past medical expenses are reasonable and necessary either by expert testimony or by an affidavit of past expenses. *Ibrahim v. Young*, 253 S.W.3d 790, 808 (Tex.App.—Eastland 2008, pet. denied). When there are medical expenses attributable to a condition that was not caused by the defendant's conduct, the plaintiff must segregate the expenses caused by the defendant from expenses not caused by the defendant, usually by expert testimony. See *Texarkana Mem'l Hosp., Inc. v. Murdock*, 946 S.W.2d 836, 839-40 (Tex.1997).

A. So how do you prove up reasonable and necessary past medical expenses?

Section 18.001 of the Civil Practices & Remedies Code was enacted by the Legislature as a cost-effective way to prove up past medical bills. 18.001 eliminated the cost and need to call an expert to testify as to the reasonableness and necessity of medical expenses. However, 18.001 affidavits are not conclusive, thus can be controverted by competing affidavits as provided by the statute.

Section 18.001:

- (a) This section applies to civil actions only, but not to an action on a sworn account.
- (b) Unless a controverting affidavit is served 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. The affidavit is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action.
- (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 records showing the service provided and charge made; and
 - (3) include an itemized statement of the service and charge.
- (d) 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 by the earlier of:
 - (1) 90 days after the date the defendant files an answer;

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