

From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: WHAT IS THE SIGNIFICANCE OF DIFFERENT TYPES OF MEDICAL RECORDS?

In receiving a workers' compensation claim, the first documents I review after the FROI-1 are the medical records. There are four (4) basic types of medical records, and the purpose of this week's article will be to discuss the significance of each kind of record, their level of importance, and additional information that can be gleaned from some records of each type. Initially, it should be noted that while all medical records are important, some records are more important than others, particularly when you are analyzing a claim to determine what happened.

The four (4) principle types of medical records include emergency room records, primary care physician's records, treating physician's records, and records relating to diagnostic testing and therapy. We will take these records in order of importance:

- **Emergency room records:** These records are significant because they normally are developed at or near the time of injury, and therefore constitute a contemporaneous report. Notwithstanding what is on the FROI-1, the claimant is normally stuck with the mechanism of injury contained in an emergency room record. The ER records also often contain physical descriptions and, in most cases, a medical history. I think that these medical records are given the most credibility by hearing officers and juries because: 1) they are often generated before a strategy is developed to maximize the value of a claim and 2) the claimant has an inherent need to be truthful in order to alleviate their symptoms.
- **Primary care physician records:** These are often filled with information concerning the claimant's prior physical problems (i.e. "comorbidities") and whether or not they were treated for the same body part or parts in the past. In addition, due to the nature of the relationship, a PCP will also often provide insight into the claimant's psyche, including whether the claimant seeks treatment for every small symptom or whether the claimant's reported level of pain is unusual. You can also glean a family history from the PCP records, as well as previous incidents which may have lingering symptoms. I normally always issue subpoenas for PCP records once a case has reached litigation stage.
- **Treating physician records:** These records are in many respects the least reliable of any medical records. Most often, and in particular where a treating physician is referred by an attorney, the narrative has been established and the complaints are magnified. These records can be significant for objective findings, as well as a description of prior work-related injuries. I often use them to contrast with the ER records in arguing that the narrative of the injury has changed over time. It is particularly important to evaluate these records for the necessity of treatment and/or objective testing and when compared to the PCP records, whether a claimant has been honest with the existence and scope of

prior injuries. Pay particular attention to affected body parts and whether symptoms seem to be “spreading” as the number of visits increase.

- Therapy records: In many respects these records are the least informative. Often hand-written, these records are notoriously difficult to analyze and contain the same catch phrases and “buzz words.” (This is particularly true when therapy is given within the office of the treating physician.) However, one should look at these records to evaluate symptoms, complaints, and whether the therapy is providing assistance. They can also be cross-checked against the ER and PCP records, and charted to see whether actual improvement is taking place.

I tell all my clients that I will never complain about receiving too many medical records. I review them all, and I have found that the more medical records are analyzed, the more narratives can emerge from these records.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

Donald G. Drinko, Esq.
GALLAGHER SHARP
1501 Euclid Avenue - 6th Floor
Cleveland, OH 44115
Direct Dial: 216.522.1326
ddrinko@gallaghersharp.com
www.gallaghersharp.com