

Healthy Defense

The Use Of Pharmacy Records When Defending a Case

When I first began to practice law I had an arbitration case where I represented the defendant. I remember nothing about that case except that when it was over, one of the panel members took me aside and told me to make sure that I always read the medical records thoroughly. I was never certain as to what he saw that I didn't see or what led him to give me that advice, but it was advice that I took to heart. Since then, I have made certain to closely read every medical record that I subpoena, and I also learned that some records that are not always sought can be particularly helpful when defending a case: the plaintiff's pharmacy records. Defense practitioners sometimes forget to subpoena these records, but they can be invaluable to the defense of your case.

Whether you are practicing personal injury defense or workers' compensation defense, it is axiomatic that you subpoena all of the plaintiff's medical records. Your first discovery request should include a request for the name and address of all pharmacies that the plaintiff has used during the last five years. Most people are creatures of habit and tend to use one pharmacy for all of their prescriptions. That pharmacy is usually close to home or to work. Because our society is a mobile one with people moving and changing jobs frequently, there may be several pharmacies that an individual has used. By obtaining the names and addresses of all of the pharmacies used by the plaintiff in the last five years, the defense attorney can be assured of obtaining a significant amount of information about the plaintiff — and some of it may be information that the plaintiff did not give you or expect you to get.

When you receive the pharmacy records you will be surprised at the amount of information that they give you. Besides basic identifying information such as the plaintiff's name and address, you will also learn prior addresses and other addresses where the plaintiff may currently be staying. You will also get telephone numbers including both landlines and cell phone numbers. People tend to want the pharmacist to be able to reach them if there is a problem with their medication, and they will generally give the pharmacy the most accurate contact information. This information may be very helpful to you when doing surveillance.

Pharmacy records are a snapshot of the plaintiff's overall health. They let you see what medications the plaintiff is taking as well as those that he has taken; the amount of medications prescribed; the frequency of refills; and perhaps most important of all, they will provide you with the names of all providers who have prescribed medication to the plaintiff. All of this information gives you a better understanding of the plaintiff and his medical condition. You can compare this information to the information that the plaintiff gives you when testifying at deposition or at trial.

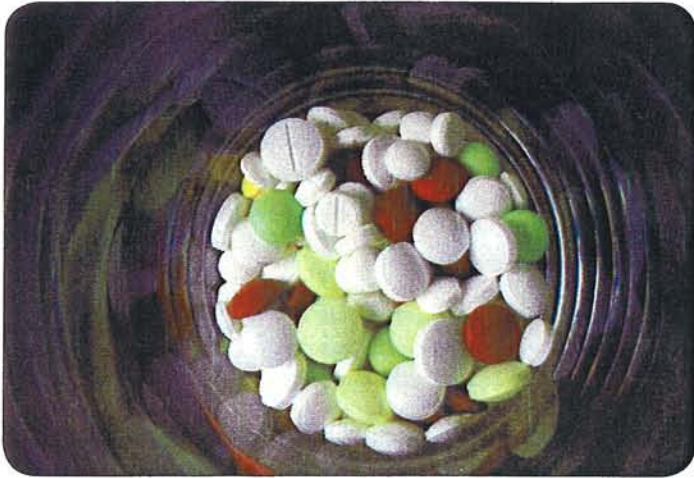
The list of medications that a person takes or has taken lets you know if the person has any systemic conditions such as hypertension or diabetes. You may also learn if the plaintiff has more serious problems such as cancer or heart disease. You will certainly see what medication the plaintiff is taking as the result of your injury or accident, and that will help you to assess the severity of the work accident or injury and evaluate the economic damages of your case.

These records may also help you to attack the plaintiff's credibility. The plaintiff

may have denied any earlier orthopedic problems, but this may be disputed by the pharmacy records that show that the plaintiff has a long-standing history of taking nonsteroidal anti-inflammatory medication. This suggests a pre-existing condition of arthritis. If the medication that the plaintiff is taking now is no different from the medication that he was taking five years before your injury or accident occurred, that information will obviously help your case. Conversely, if the plaintiff was not taking any prescriptions before the injury occurred and is now taking pain medication, your case may be weakened. What is important is that the pharmacy records give you this information.

Knowing the quantity of medication that the plaintiff is being prescribed is also useful information. If the plaintiff is receiving large amounts of narcotic medication, it may suggest that the plaintiff is becoming drug dependent and/or that the plaintiff may be selling some of his prescriptions. This may not be information that you act on, but it may be important for you to know. The amount of medication prescribed also lets you know if the plaintiff has any chronic conditions or if he is just taking medication for an acute event.

The most important information that you may get from the pharmacy records are the names of all providers who have prescribed medication to the plaintiff. During discovery you will have asked the plaintiff who his treating doctor is, and where that doctor is located. You may only get the names of those providers with whom the plaintiff is treating for this injury. From reviewing the pharmacy records you will learn the identities of all providers, including nurse practitioners and physician's assistants, who may have prescribed medication to the plaintiff. Most people have one physician who is the



central repository of all of their medical information. Even if the plaintiff doesn't give you that information, the pharmacy records will. By learning who that doctor is, you will be able to subpoena those records and from those records learn about other providers as well as reports of past and present diagnostic studies. This all becomes important as you obtain actual films or arthroscopic photographs and have your expert determine if the findings are long-standing or represent an acute finding. You may also learn that the plaintiff's primary care doctor has completed forms for Social Security or for a short-term or long-term disability carrier and be

able to obtain those records as well. Piecing all of this information together puts you and your client in a better position to accurately evaluate your case.

The pharmacy records also provide you with information about the plaintiff's private health insurance. These records tell you who the plaintiff's primary health insurance carrier is and gives you the necessary identifying information so that you can subpoena that carrier's information and learn even more about your plaintiff. You may also obtain the identifying information about previous health insurance carriers that may also be helpful to your case.

By simply remembering to always learn the name of the plaintiff's pharmacy so that you can subpoena those records, you guarantee that you will learn a significant amount of medical information about the plaintiff. This increases the likelihood of winning your case or at the very least mitigating the plaintiff's damages. ■

Niki T. Ingram, (ntingram@mdwgc.com) a member of the editorial board of The Philadelphia Lawyer, is a partner in the workers' compensation practice at the law firm of Marshall, Dennehy, Warner, Coleman & Goggin.

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