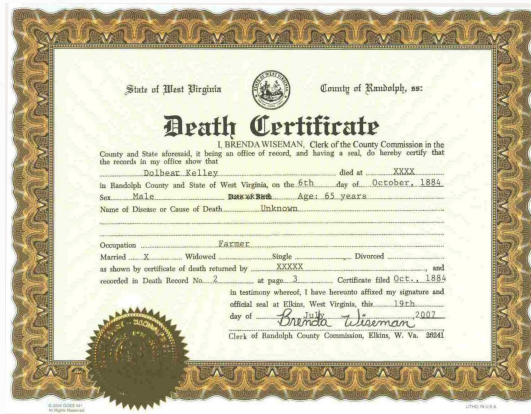


A silver laptop is open on a dark, reflective desk. The laptop screen is white and displays the title 'INTRODUCING PHYSICAL EVIDENCE AT TRIAL' in large, bold, black capital letters. To the left of the laptop is a dark grey ceramic mug. To the right is a stack of four books with various colored spines. The background is a solid dark grey.

# **INTRODUCING PHYSICAL EVIDENCE AT TRIAL**

# PHYSICAL EVIDENCE

- Physical evidence is Real evidence
- Tangible Object as contrasted with Testimony.



object vs speech



- Physical Evidence- Anything Material & Relevant

- Medical Bills & Medical Records
- Photographs
- Reports and Documents
- Parts of Damaged Cars
- Bloody Shirt or Shoe



# SELF AUTHENTICATION

IT IS  
WHAT IT IS



BECAUSE I SAY SO!

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## What is Self Authentication?

- Foundation for Admission of Many Documents
- Rules of Evidence 2:902
- Certification and Timely Notice to Opponent

# Medical Bills In Circuit Court

## Options

- Expert Testimony

or

- Client Testimony Using 8.01-413.01

# **Va Code 8.01-413.01**

## **Rebuttable Presumption Bills Admissible**

- (i) identify the health care provider,
- (ii) explain the circumstances surrounding receipt of the bill,
- (iii) describe the medical services rendered
- (iv) testify that the services were rendered due to treatment for the injuries received in the accident
- (v) furnish records at least (21) twenty-one days prior to the trial.

## Query

WHAT IF THE TREATMENT WAS AT KAISER?

- KAISER DOES NOT GENERATE ANY BILLS
- CAN YOU ADMIT THE COST OF TREATMENT IF YOU ARE A KAISER PATIENT?

# **KAISER AND 8.02-413.01(B)**

RETAIN A BILLING CODER TO REVIEW  
KAISER CHART AND CREATE A STATEMENT  
OF CHARGES



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# **MEDICAL BILLS IN GDC**

- Controlling Statute is Virginia Code 16.1-88.2
- Self Authenticating Affidavit from the treating healthcare provider or billing custodian

## SWORN STATEMENT OF HEALTH CARE PROVIDER

I, (name of provider), pursuant to Virginia Code § 16.1-88.2, 8.01-581.1, and 8.01-4.3, do hereby certify that:

1. I am a billing custodian for [name and address of the provider].
2. The attached statement of cost for services rendered to [client] by [name of provider] on [date of service] totaling {amount of bill} is true and accurate.

*I declare under penalty of perjury that the foregoing is true and correct.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# **MEDICAL RECORDS CIRCUIT COURT**

Va. Code 8.01-413

- Statements made by the Plaintiff.
- To healthcare providers.
- For purposes of treatment.

## Medical Records – What Is Admissible?

- Medical history at ER records “patient’s car going 45-55 MPH”, and speed limit at accident scene was 25 MPH. Admissible?
- Medical note says “Patient says he felt dizzy at accident scene, but I (Dr. Smith) believe dizziness is due to his failure to take his BP meds”.  
Admissible?

### ANSWER TO Q #1:

- The rule is limited to statements made for medical care.
- Arguably does not include some aspects of a history, such as the speed or other facts not relevant to the medical care.

### ANSWER TO Q #2:

- Opinions of providers are generally inadmissible and would need to be redacted from the medical record.

# MEDICAL RECORDS IN GDC

- SWORN STATEMENT OF HEALTH CARE PROVIDER

I, [NAME OF PROVIDER] , pursuant to Virginia Code § 16.1-88.2, 8.01-581.1, and 8.01-4.3, do hereby certify that:

1. I am a records and billing custodian for [name and address of provider].
2. [name of patient/client] was treated by [name of provider] from [first date of treatment] through [last date of treatment].
3. The attached is a true and accurate copy of the medical records pertaining to [name the patient/client] treatment at [name the provider] from [first date of treatment] through [last date of treatment].
4. The attached statement of cost for services rendered for [name of patient/client] from [first date of treatment] through [last date of treatment], totaling [insert amount of the bill] is true and accurate.

*I declare under penalty of perjury that the foregoing is true and correct.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# PHOTOGRAPHS



MUST THE PHOTOGRAPHER TESTIFY  
BEFORE A PHOTOGRAPH CAN BE ADMITTED?

- It is not necessary to find the photographer to authenticate a photograph.
- To admit a photograph, someone with first-hand knowledge must testify that the photo “fairly and accurately depicts” whatever was photographed.

# **BUSINESS RECORDS – 8.01-390.3**

- Rule of Evidence 2:902(6)(b)

Provide a copy of the record and the certification to all other parties...no later than 15 days in advance of the trial or hearing.



# **BUSINESS RECORDS – 8.01-390.3**

## **Admissibility**

- (i) witness testimony establishing the authenticity of and foundation for the record made by the record custodian.
- (ii) by affidavit pursuant to § 8.01-4.3 "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct."), or
- (iii) a combination of witness testimony and a certification.



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- ARE 911 CALLS (AUDIO RECORDINGS OR TRANSCRIPTS) ADMISSIBLE?



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- ARE THE REPORTS OF MEDICAL EXAMINERS ADMISSIBLE?

# 911 EMERGENCY CALLS

Va. Code 8.01-390(B) allows for a presumption that 911 calls are authentic if accompanied by a certificate from a record custodian confirming it is a true copy and including the date and time of the incoming call and if available, the phone number of the incoming call.

## REPORT OF MEDICAL EXAMINER

- Reports of a Medical Examiner, when duly attested, shall be received as evidence in any court or other proceeding....

Code § 8.01-390.2

# Public Records/Reports

Rule 2:803(8) Virginia Rules of Evidence  
Hearsay Exceptions for Public Records/Reports.

Medical Examiner's Report is a Public Record

The ME report is admissible under  
Code § 8.01-390.2 & Rule 2:803(8).

So how could there be a problem with  
admissibility?



## Lucas v. Riverhill Poultry, Inc., 860 S.E. 2d 361 (July 1, 2021)

- Single vehicle tractor trailer accident where TT ran off road and both driver and his passenger died.
- The issue in the case was the identity of the driver.
- The Estate of Lucas sued Hilliard claiming he was driving and he fell asleep at the wheel.



Medical examiner's report included a summary of circumstances stating Hilliard was the driver, which the Lucas Estate wanted admitted.

- *This 68-year-old decedent (Hilliard), was driving a 2004 Kenworth tractor trailer on I-81 in Virginia with a passenger.*
- *The vehicle reportedly ran off the road, struck a guardrail, struck an embankment, and then overturned.*
- *The driver and passenger were pronounced dead.*

On cross-examination, the medical examiner admitted:

- She had relied on the police report to tell her who was driving.
- She was neither trained nor expected to recreate automobile accidents or make final conclusions about what object or mechanism may have caused the blunt force trauma to Hilliard's head.

- She could only speculate about whether Hilliard suffered any adverse reactions to medications found in his blood, or whether he was awake or asleep at the time the vehicle left the roadway.
- She confirmed that once she determined the cause and manner of death, her duties were complete.

- Rule of Evidence 2:803(8)
- (Hearsay Exceptions for Public Records/Reports)

Inapplicable to those portions of the Medical Examiner's report which were not observed as part of her official duties.

- The problem lies with hearsay and speculation.
- Opinions went beyond official duties of medical examiner
- Statutory duties of medical examiner are to determine the cause and manner of death.

# Damage to Motor Vehicle

- Virginia Code 8.01-416 also allows for admission of itemized estimates of repair.....
- if sworn to by an estimator who includes:
  - the time he has engaged in such work, and
  - the trade name and address of the employer.
- The affidavit must be provided to the adverse party at least 7 days prior to trial.

## Total Loss of Motor Vehicle

- Va. Code 419.1 allows for admission of the NADA yellow or black books ....
- or any other vehicle valuation service regularly used and recognized in the automobile industry ....
- to establish the market value [of the vehicle] as of the relevant date.



## Query

Is the data compiled for insurance companies by CCC (Certified Collateral Corporation) admissible?

Is CCC a service recognized the automobile industry, or just the insurance industry?

- ✓ Unless there is testimony, at trial, that CCC meets the definition of a.....
- ✓ Vehicle valuation service regularly used and recognized in the automobile industry to establish the market value.....
- ✓ I would argue its reports are inadmissible because they are used in the insurance industry, not the automobile industry.