

Private Parts

By Jeffrey M. Baill, YOST & BAILL, LLP

There is something unnatural about being restricted from showing a tortfeasor's carrier supporting information about your claim. I have always made the recommendation to my staff, and others, that one of the most beneficial things we can do from a plaintiff's perspective is to get as much information as possible to the defense. Providing information to the other side will, ultimately, arm it with the documentation it needs to pay your claim.

I cringe at the practice of making the defense work to get the information it needs to evaluate your claim. An efficient subrogation practice aims to resolve claims in a fair manner, as fast as possible. Creating obstacles in the exchange of information does nothing to assist in the resolution of a claim.

Such obstacles have arisen over the last decade or so in claims involving medical information of injured parties. In worker's compensation, Med Pay, PIP, health, and other subrogation claims involving personal injury, State and Federal laws have put very strict regulations on the release of medical information. Some Federal and State courts are requiring the redaction of personal information including social security numbers before documents are filed, even where a release has been obtained. In addition to the laws, there are always Plaintiffs' attorneys on the lookout for potential class action litigation against their favorite target, insurance companies.

Those of us who practice in the areas where release of medical information is common must walk through this landmine with great caution. Here are some of my recommendations to stay out of trouble:

1. Make sure your staff, especially new support staff, understand the issue and are asking the right questions before any information about an injured party is released.
2. Make sure your vendors, law firms included, are aware of the issues and are also following number 1.
3. When in doubt, obtain a release from the injured party before releasing information.
4. It may help to let the injured party know at the beginning of the subrogation process that you may need to release information later to make the tortfeasor pay for the damage it caused.
5. When the case is in suit, if the injured party won't cooperate, have the defendant get a court order to obtain the information.

It would be far easier for us to deal with this issue if standard insurance policies had a clause in them that specifically gave each of us the right to release medical information

for the sole purpose of pursuing a subrogation claim. That would avoid most of the problems we run into today.

The reality is that there are always pitfalls we have to watch out for as we pursue subrogation. Privacy issues are just another one to add to the list. Education of staff is a key way to stay out of trouble. Let us remember, we need permission to show the private parts of our files.