Medical record affidavits play an important role in proving a case at trial. Medical records affidavits are admissible as evidence at trial to prove the fair and reasonable charge for the services and the necessity of treatment, the diagnosis of the medical provider, the prognosis of the medical provider, the opinion of the medical provider as to the proximate cause of the condition so diagnosed, and the opinion of the medical provider as to disability or incapacity, if any, proximately resulting from the condition so diagnosed. Since medical affidavits routinely include medical opinions which can only be offered by a healthcare professional, Rhode Island law (§9-19-27) has always required that all medical affidavits must be signed by the medical professional who rendered the services to the patient.

During the General Assembly’s 2012 legislative session, legislation was introduced that would have allowed individuals other than those who rendered the medical services to the patient to sign medical affidavits. In addition, the legislation allowed the affidavit to incorporate by reference, not simply the contemporaneous medical records of the provider, but other records or written statements relied upon by the affiant in reaching the opinions set forth in the affidavit. In the case of a hospital or health care facility, the legislation stated that an authorized agent of either the hospital or health care facility is deemed the appropriate agent to swear to the written statements contained in the medical records. The legislation affirmatively provided that medical records shall not be deemed inadmissible because the physician employed by the hospital or health care facility has not subscribed to the affidavit. The legislation allowed, however, for the adverse party to cross-examine the affiant at the office of the physician or other expert witness. The legislation was strongly supported by the Plaintiffs’ Bar as a mechanism to ensure
that their client’s medical records would be entered into evidence even if the treating medical professional was unavailable or unwilling to sign a medical records affidavit.

The rationale set forth in the legislation for the proposed changes was that the bill would relieve physicians and the other medical professionals who are associated with hospitals and other health care facilities from the hardship and inconvenience of attending court as witnesses. The existing medical records affidavit statute, however, does not require physicians and other medical professionals to attend court as witnesses. To the contrary, the existing statutory provisions permit the treating medical professional to sign medical records affidavits, thereby relieving the medical professional from having to attend court as a witness. The unstated goal of this legislation was clear: to allow individuals other than those who provided care to the plaintiff to provide sworn testimony regarding the medical necessity of the treatment and the causation of the plaintiff’s injuries.

Although medical records affidavits are not routinely used in medical malpractice trials, the possibility of a medical records affidavit being introduced at trial to prove causation would prove to be extremely detrimental to defendants in medical malpractice trials. Most significantly, the proposed legislation would have permitted a non-medical professional to provide sworn testimony on medical issues which are critically important and hotly contested in malpractice cases, including the causation of plaintiff’s injuries. To address this concern, we successfully lobbied on behalf of a medical liability insurer for an exemption to the legislation for professional negligence cases. In response to our efforts, the legislature added a section to the bill that states:
These provisions shall not apply to claims for personal injury or wrongful death filed against a licensed physician, hospital, clinic, health maintenance organization, professional service corporation providing health services, dentist, or dental hygienist based on professional negligence.

As a consequence of this amendment, the relaxed provisions of the new act do not apply to medical malpractice cases. Rather, a separate section, § 9-19-27.2, was added to the legislation to maintain the original requirements for use of medical records affidavits in professional negligence cases.

The final version of the legislation which passed the House and the Senate included the amendment we drafted which exempted professional negligence cases from the new medical affidavit requirements. The Assembly did so notwithstanding objections from some that medical malpractice cases should not enjoy their own procedural rules and should be required to follow the same procedures as all civil actions. The Governor signed the bill into law on June 21, 2012 and the bill went into effect upon passage.