

Seven Reasons Why Falsification of Records Does Not Pose a Major Problem in Medical Malpractice Litigations

When clients contact me about a potential medical malpractice case, more often than not one of their concerns is the possibility that a medical provider might falsify records to hide evidence of negligence.

Unfortunately, falsification of records is possibility in any medical malpractice case. I have seen a variety of attempts at this through the years. The most egregious example involved a plastic surgeon who literally created an entirely new set of office records so that he could claim that he provided my client with the appropriate informed consent. Usually, however, when medical records are altered, the result is more subtle. Sometimes an extra notation is added to a record to suggest a certain action was taken. Other times, a diagnostic report or consultation letter is removed from a physician's chart to suggest the doctor was unaware of something that should have provoked action. Occasionally, a doctor will suggest that he communicated information to a patient when, in fact, he did not.

Here are seven reasons why falsification of records does not pose a major problem in medical malpractice litigations:

1. There are motivators in place to discourage medical providers from falsifying records. First, falsifying a medical record is a crime, for which a doctor can be criminally prosecuted. Second, falsification of records is an independent civil cause of action (fraudulent concealment or spoliation of evidence) that can expose a medical provider to punitive damages. Finally, a medical providers insurance carrier may attempt to disclaim coverage when medical records are falsified.
2. Forensic experts can review a record and tell whether a record has been altered. Expert document examiners can analyze medical records and determine whether they have been tampered with. They can detect differences in ink, look for the presence or absence of indentations on sheets above and below the questioned document, and perform chemical analysis of documents to expose fraudulent changes.
3. It is very difficult for medical providers to successfully falsify medical records in an institutional setting. In a hospital, there are usually multiple actors creating contemporaneous records who are concerned with and writing about the same facts. Therefore, if a doctor changes a part of one record, it will often be inconsistent with what is written by other doctors and nurses. This is especially true because when an unexpected outcome occurs in a hospital setting, those who are not responsible for the outcome tend to chart defensively and provide more detail in records so that they are not implicated when a review of the care is undertaken by the hospital, or later in a civil litigation.
4. Falsification of records create a void or disruption in the timeline of care. Records related to medical care create a coherent timeline where causes and effects can be evaluated after the

fact. If an individual changes a key fact in the timeline, this stands out and creates suspicions. At that point, forensic experts can be consulted to review a record if other aspects of the chart do not corroborate that a record has been altered.

5. Falsifying records after the fact can be perilous if the records have already been distributed to other people. Health care providers share their records with other doctors, and this happens frequently. Consultation notes, diagnostic tests results and preoperative clearances are forwarded to referring physicians, health insurance carriers and hospitals. If there is more than one version of the same record, there is a good chance that this will come to light when records are assembled by attorneys in a medical malpractice case.
6. Records falsified after the fact will conflict with billing records. Billing records are submitted to Medicare, Medicaid and insurance companies close in time to when medical care is provided. In addition to dates of treatment, billing records often contain diagnostic codes. When medical records are falsified they will often be contradicted by a medical providers billing records.
7. If a doctor falsifies a record about a pertinent issue in your case, they are often helping, rather than hurting your case. If a doctor falsifies a medical record and you can prove this, you have the best proof possible on that issue available, since they would not bother changing a record to hide or add a fact if it was not important to a patient's care and a potential litigation.