

## Missing Medical Records: Court Sees No Intentional Spoliation Of The Evidence.

An eighty year-old patient came to the clinic with flu-like symptoms. A physician's assistant took his history and examined him. She made extensive notes in his clinic chart.

She told the physician he had a history of congestive heart failure and was experiencing chest pains. The physician ordered an EKG and a chest x-ray.

After the physician's assistant got an EKG the patient was allowed to walk over to the hospital for his chest xray. As a second physician was reading his EKG strip the patient collapsed on his way to the hospital. The physician grabbed the entire chart, including the PA's recent notes and the EKG strip and rushed them to the ICU where the patient had been taken. The patient died in the ICU.

The family filed suit against the clinic and the two physicians. The family's attorney demanded access to the patient's clinic chart. The clinic no longer had the chart and had no way to locate it.

Without the chart the family's attorney's expert witness had no factual basis for an opinion how the clinic had been negligent and how such alleged negligence contributed to the patient's death.

### **No Spoliation of the Evidence**

The court was going to dismiss the case, but the family's attorney argued the fact the chart was missing created an inference that the chart contained evidence the clinic was negligent. The legal term for that is spoliation of the evidence.

The Supreme Court of Iowa acknowledged that spoliation of the evidence is a valid legal concept, but would not apply it to this case. The clinic did not intentionally alter, destroy or lose the chart, knowing in advance when the patient went to the ICU that he would die there and the clinic would be sued. The chart apparently was lost in the ICU by ICU personnel, the court believed, with no intent to protect the clinic. **Phillips v. Covenant Clinic, 625 N.W. 2d 714 (Iowa, 2001).**

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***Evidence being altered, destroyed or lost is referred to as spoliation of the evidence.***

***It is a well established legal principle that intentional alteration, loss or destruction of documents or physical evidence relevant to the issues in a legal proceeding, or refusal to hand it over, creates an inference that the evidence was unfavorable to the party who had possession of it.***

***Common sense says that someone who destroys or loses a document relevant to litigation must have felt threatened by the contents of the document.***

***The courts see it as an admission by a party who alters, destroys or loses relevant evidence that the party's legal position in the case is weak.***

***However, the courts do this only when the evidence has been altered, lost or destroyed intentionally.***

***Spoliation of the evidence does not occur and no assumptions are made when evidence is destroyed unintentionally, negligently or in the course of routine procedures to get rid of old files.***

SUPREME COURT OF IOWA, 2001.

## Patient Not Present In Court: His Rights Were Violated.

The patient had a long history of paranoid schizophrenia. He was court-ordered to receive regular injections of Prolixin Decanoate at an outpatient facility. He complied for six years.

Three months after he stopped going in for the medication he was court-ordered to be held at the VA hospital psych unit for observation, pending a court hearing on long-term commitment one week later.

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***On the morning he was to appear in court the patient had become agitated and was screaming threats at staff members.***

***The patient was placed in restraints and was not allowed to speak with his attorney before his attorney appeared in court.***

***The patient's rights were violated.***

SUPREME COURT OF IOWA, 2001.

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The nurse practitioner called the patient's new court-appointed attorney but did not allow the patient to talk to the attorney. The attorney appeared in court, but had nothing to say while the patient's commitment was ordered continued based on the VA psychiatrist's testimony.

The Supreme Court of Iowa ruled the patient's rights were violated. He had the right to appear in court himself and the right to effective assistance of counsel. His attorney at least should have been able to communicate with his client, tell the court the situation and ask for postponement of the hearing to a time when the patient would be able to appear.

Putting him in restraints, assuming his behavior warranted it, was not a violation of his rights. **In re M.T., 625 N.E. 2d 702 (Iowa, 2001).**