

## Health Care Providers' Altered Medical Records Results in Attorney's Disbarment

10 Jan 2018

, [Crystal S. Deese](#)

### Delaware Supreme Court Rules on Malpractice Case Concerning Altered Medical Records

The Supreme Court of Delaware disbarred a lawyer who had been practicing for more than three decades, with no prior disciplinary record, after he failed to produce the original version of altered medical records and then failed to correct the sworn testimony of the physician and physician's assistant who altered the chart. He was required to pay the costs of the disbarment proceedings.

The attorney represented a physician in a [medical malpractice](#) case involving the extent of a baby's jaundice. The doctor and physician's assistant changed their records. The physician's assistant changed her description of the jaundice's location. The doctor changed the follow up instructions provided to the baby's Mom.

### Attorney Failed to Provide Altered Medical Records

In responses to written discovery, the attorney failed to produce the original version of the altered medical records or disclose that any alterations occurred. At deposition, the physician testified that the medical chart produced in discovery was complete. She also testified that she had not reviewed anything other than the chart produced in discovery when she had also reviewed the unproduced, altered version of the record. The physician's assistant similarly testified that the chart produced in discovery was complete even though it did not contain the altered record. The disbarred attorney explained that he thought the altered records would hurt his client's credibility. He denied believing he had any duty to produce the altered medical record. He admitted that he had reported the existence of the altered record to the physician's malpractice carrier.

The Supreme Court of Delaware described the attorney's conduct as "at best dishonest and at worst criminal." The Court found the attorney acted knowingly (with conscious awareness) and intentionally (designed to accomplish a particular result, i.e., protect client's credibility). The attorney was found to have aided in perpetrating a fraud on the legal system against a vulnerable (minor) plaintiff. While the attorney presented evidence of his own good moral character, this was offset by the Court's conclusion regarding his absence of remorse. While he claimed remorse, the Court noted he continued refusing to acknowledge that his conduct was the wrongful. The Court was also critical of the attorney's failure to report his own conduct to the Bar.

See [In re Daniel J. McCarthy](#), No. 229, 2017, Board Case No. 2011-055-B (Del. October 23, 2017) (<https://courts.delaware.gov/Opinions/Download.aspx?id=263530>).

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**TAGGED:** altered medical records, attorney disbarment, failure to produce