

5.50H ALTERATION OF MEDICAL RECORDS¹ (Approved 7/02)

Physicians have a duty to ensure that all treatment records accurately reflect the treatment or services rendered.² Corrections or changes to entries may be made only where the change is clearly identified as such, dated and initialed by the person making the change.³ In fact, it is against the law in this State to alter medical records with the intent to deceive or mislead anyone.⁴

In this case you have heard evidence that Dr. [*insert the doctor's name*] altered his records in the following manner: [*here describe the actions*].

The alteration of medical records is admissible as evidence of a defendant's own belief that the actual records do not support his defense. If you find that Dr. [*insert the doctor's name*] altered the medical records with the intent to deceive or mislead anyone, you may infer that the alteration of the records in this case occurred because

¹ See *Rosenblit v. Zimmerman*, 166 N.J. 391 (2001); *In re Jasclevich License Revocation*, 182 N.J. Super. 455, 471-472 (App. Div. 1982).

² N.J.A.C. 13:35-6.5(b).

³ N.J.A.C. 13:35-6.5(b)(2).

⁴ N.J.A.C. 2C:21-4.1. Purposeful destruction, alteration or falsification of record relating to care of medical or surgical or podiatric patient in order to deceive or mislead.

Dr. [insert the doctor's name] believed that the original record would have been unfavorable in the trial of this matter.⁵

NOTE TO JUDGE

See also, Model Civil Charge 5.50I, Fraudulent Concealment of Medical Records. The *Rosenblit* Court explained,

In sum, where an adversary has intentionally hidden or destroyed (spoliated) evidence necessary to a party's cause of action and that misdeed is uncovered in time for trial, plaintiff is entitled to a spoliation inference that the missing evidence would be unfavorable to the wrong-doer and may also amend his or her complaint to add a claim for fraudulent concealment. *Id.* at 411.

The Appellate Division stated in *In re Jasclevich License Revocation*, 182 *N.J. Super.* 455, 471-472 (App. Div. 1982):

We are persuaded that a physician's duty to a patient cannot but encompass his affirmative obligation to maintain the integrity, accuracy, truth and reliability of the patient's medical record. His obligation in this regard is no less compelling than his duties respecting diagnosis and treatment of the patient since the medical community must, of necessity, be able to rely on those records in the continuing and future care of that patient. Obviously, the rendering of that care is prejudiced by anything in those records which is false, misleading or inaccurate. We hold,

⁵“A jury could infer from Dr. Zimmerman's behavior that he believed that Rosenblit's medical records would prejudice his position in the litigation. That belief could be significant to a jury faced with expert evidence in equipoise. To be sure, the alteration evidence would have had a substantial impact on Dr. Zimmerman's case. But that is what happens when there is powerful and persuasive evidence.” *Id.* at 409-410.

therefore, that a deliberate falsification by a physician of his patient's medical record, particularly when the reason therefore is to protect his own interests at the expense of his patient's, must be regarded as gross malpractice endangering the health or life of his patient.

In appropriate cases the court may also charge False in One - False in All, *see* Model Civil Charge 1.12M.