

# Can You Sue A Doctor For Losing Medical Records?

Written by Bonner Law NOVEMBER 3, 2022 | LEGAL

Are you wondering if can you sue a doctor for losing medical records? Medical malpractice cases require a plaintiff to prove that a physician deviated from the standard of medical care. To determine whether a physician provided proper and adequate care to a patient, there are several facts that need to be considered. These include: the patient's condition, the patient's medical history, the physician's awareness of the patient's history, the physician's contemporaneous observations, and more. These can be shown using medical records. Therefore, when records are missing from a patient's file it can be detrimental to their case against a doctor or a medical facility.

Types of records that are typically used in a medical malpractice case include:

## Types Of Records

- Emergency Room Records
- Hospital Records
- Progress Notes
- Consult notes
- Operative records
- Physician's Orders
- Lab Results
- Code Blue Documentation
- Discharge Records
- Pre- and post- Op Evaluations
- Images (X-Rays, MRIs, CTs, etc.)

## Importance Of Records

Each record provides a summary of a different point during the patient's care. Depending on what the plaintiff is alleging and which doctor(s) they are filing a claim against, the corresponding set of records may make or break the case.

## Spoliation of Records

Spoliation is the legal term used to describe the destruction and/or loss of evidence. Spoliation can be both intentional and unintentional. Sometimes a loss of hospital records is accidental. Still, there are legal remedies in place when a hospital or any other medical facility cannot provide a patient with documents which information relevant to the care they received and are basing their claim upon.

## Consequences for Purposeful Destruction or Losing Medical Records

There are consequences that could come about from the destruction and alteration of records. If the other party has destroyed relevant evidence that they had a duty to preserve, the court can impose sanctions, grant legal fees, and even instruct the jury to consider that there is missing evidence.

There are also statutes that deal directly with the preservation of medical records. For example, Florida Statute § 395.32 states:(1) Any person who fraudulently alters, defaces, or falsifies any medical record, or causes or procures any of these offenses to be committed, commits a **misdemeanor of the second degree**, punishable as provided in s. 775.082 or s. 775.083.(2) A conviction under subsection (1) is also grounds for restriction, suspension, or termination of license privileges.

[Click here](#) to read our blog on the alteration of medical records.

**Valcin Doctrine**

In 1987, the Florida Supreme court decided the case *Pub. Health Trust of Dade Cnty. v. Valcin*, 507 So.2d 596 (Fla. 1987). In this case the court found that when medical records are destroyed, lost or missing, there is an "rebuttable presumption." What is a "rebuttable presumption"? This means that when the hospital loses records crucial to the plaintiff's case, the hospital then has the burden to prove that that the negligence claims are not true and would not have been proven true by the missing records. The Valcin doctrine has been incorporated into Florida Statute § 90.302.

## Medical Malpractice

If you believe you or a family member has a medical malpractice claim because of the negligence of hospital nurses or doctors, you may be entitled to compensation for your damages. Call Bonner Law at 1-800-4MEDMAL for a free consultation. Michael P. Bonner has over 30 years of experience representing clients in medical malpractice litigation.

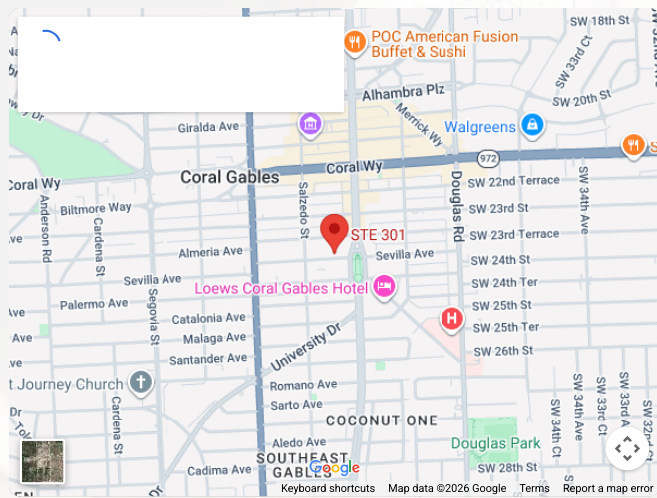
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- Nursing Home Negligence
- Birth Injuries

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