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## Doctor loses your medical records. Can jury hold it against him at trial?

In a medical malpractice case, when the doctor is still using handwritten notes instead of electronic medical records. If he somehow loses your medical records, can I ask the judge at the end of the case to charge the jury with an instruction that says, "Hey, the doctor lost the records, you cannot hold it against him for doing so." You know what this is all about? Come join me for a moment as I share with you some terrific information. Hi, I'm Gerry Oginski of the New York Medical Malpractice & Personal Injury Attorney practicing law in the state of New York.

Now, it's a medical malpractice case and we learn during the course of discovery that the doctor cannot locate your records. The doctor lost your records. If the case goes to trial, at the end of the case, I can ask the judge for something known as a missing document charge. What is that? It's basically an instruction to tell the jury that listen, "This doctor had an obligation to keep and maintain all of the patient's records." Because he no longer has those records and doesn't have a reasonable explanation for why he no longer has these records, you can hold it against him and in fact, you can infer the worst possible things because he no longer has these records.

What does that really mean? The judge basically tells the jury that the law says, "Listen, because the doctor doesn't have these records anymore, you can infer that he lost these records maybe intentionally." You can infer that the doctor lost these records because if the doctor actually had those records and we were able to see them, in all likelihood, the information contained in there would not be very favorable to the doctor. In that instance where the judge agrees with me and gives the jury an instruction that says, "Hey, the doctor failed

to bring in records that he was required to maintain, you the jury can now hold that fact against the doctor and assume that if he had brought these in, it would be unfavorable to his position.

Why do I share this great information with you on a beautiful day today while the gardeners are out mowing lawns and you can hear the leaf blowers? I share it with you just to give you an insight and an understanding to what goes on in a medical malpractice case here in the state of New York. I realized you're watching this video because you likely have questions or concerns about your own particular matter. If your matter did happen here in New York and you're contemplating bringing a lawsuit and you have questions about your own particular matter that needs answers, I invite you to pick up the phone and call me.

I can answer your legal questions. This is something I do every single day and I'd love to chat with you. You can reach me at 516-487-8207 or by email at [gerry@oginski-law.com](mailto:gerry@oginski-law.com). That's it for today's video. I'm Gerry Oginski, have a great day.