

September 2, 1992

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, MD 21702

Dear Mr. Weisberg:

Many thanks for your kind letter dated August 26, 1992, and also your letter of August 28, 1992.

My husband has read all of your books and has often remarked that you are the main scholarly researcher on the assassination. I would be honored to be affiliated with your work. I began my academic career studying to be history teacher. A favorite quote of mine is "Truth is the daughter of time" (Old Proverb) and if I can help you to discover the truth I am glad to do so. You are welcome to use my name and any materials that I send.

I appreciate the opportunity to review the two quotes you are currently preparing to use. I ask that the first one be changed slightly. When I stated that originals must not be revised, I meant that acting solely on one's own behalf one may not secretly or surreptitiously revise records. Therefore, I ask that you quote me as follows -- "it is unacceptable to revise originals (medical records) except by drawing a single line through an error without obliteration to the original text, making the appropriate change, signing it and dating it; or by attaching an amendment to the original document. Originals should not be destroyed." I believe that you will find that Dr. Knight in Forensic Pathology supports the belief that original autopsy materials should not be destroyed.¹ I have provided you with supporting data on this issue. The second quote--"if it isn't written down, it wasn't done" may appear as is.

I thought you might wish to have some supporting information concerning medical records (including autopsy reports). I have covered such areas as ownership of the record, responsibility for

¹ Knight, Bernard., MD, MRCP, FRCPath, DMJPath, Barrister, Forensic Pathology., Oxford University Press, New York, 1991. page 12.

securing the record and supporting legal case cites. As in my previous letter, any materials that were relied upon to form this opinion, together with my professional background, are supplied to you in their entirety.

Medical records are traditionally held to belong to the maker of the record, i.e. hospital records belong to the hospital, physician office records to the physician.² In addition to medical records serving patient needs, they also serve as a legal record of events.³ Therefore, hospital records, such as the autopsy of JFK belong to the hospital in question, i.e. Bethesda. This record belonged to Bethesda as it was being written in the autopsy room. Dr. Humes did not have ownership of this record. It is only in recent years, that it has been accepted that while the physical record belongs to the maker, the information contained in it belongs to the individual (patient).

This concept of ownership of medical records is documented in several ways. In some states, the ownership of the medical record is actually determined by state statutes. Ownership can also be claimed in the hospital policies and is confirmed by the Joint Commission on the Accreditation of Healthcare Organizations (JCAH).

Removal of hospital records from the facility is prohibited. Under certain circumstances, the physical removal of a record can constitute theft. Again, this prohibition against the removal of the physical record from the hospital can be found in state statutes, hospital policies and by JCAH regulations. Since the hospital owns the record it has a duty to protect it. When a record is damaged or lost a hospital can be considered derelict in its duty to protect.⁴ One legal case cite on this point is Thor v. Bask, 38 Cal App3d 558, 113 Cal Rptr 296 (1974).

You may be able to discover that Bethesda actual had a policy that forbid the removal of any hospital records from their property. This is a common policy statement found at facilities. Should you obtain the policy manual covering medical records at Bethesda you may also discover that they have a section stating the circumstances under which a record may be

² Joint Commission on Accreditation of Healthcare Organizations, Accreditation Manual for Hospitals 1991., page 90-91.

³ Hayt, Emanuel., Medicolegal Aspects of Hospital Records., Physicians' Record Company, Berwyn, Illinois. Second edition, 1977., page 166.

⁴ Hirsh, Harold, MD,JD, FCLM., Tampering with Medical Records., Medical Trial Quarterly., 1978 Annual., page 454.

changed.

I have mentioned JCAH several times in the above paragraphs. It is officially titled the Joint Commission on the Accreditation of Healthcare Organizations (formerly known as the Joint Commission the Accreditation of Hospitals). It is located in Chicago, Illinois. Joint Commission is comprised of five member organizations--The American Medical Association, the American Hospital Association, The American College of Surgeons, The American College of Physicians and the American Dental Association. Joint Commission is a voluntary accreditation body for hospitals, established in the mid-1950s. Since its conception one of its activities is to set guidelines (standards) which participating hospitals must meet in order to hold their accreditation. I provide this information, since I have used JCAH standards to support information in this letter. Joint Commission accreditation has always been desirable. Presently, JCAH is an extremely powerful organization and most facilities require their accreditation. Institutions must hold JCAH accreditation (currently) to receive federal funding.

One of the JCAH standards for record-keeping is to protect records from destruction.⁵ In most cases, the destruction being referred to is accidental, usually by fire or water. However, the duty to protect a record from deliberate harm is also there.

This then brings us to the JFK autopsy. Was there official hospital policy, in place, that stated that hospital records were the property of the hospital and as such could not be removed from the facility? Secondly, was there a medical records policy that stated under what conditions a record could be revised and the way in which this was to be undertaken? I do not know the answers to these two questions as they relate to Bethesda in 1963, but I can provide you with the general answers.

First, "medical records must be retained in their **original** or legally reproduced form (microfilmed) for a period of five years".⁶ Secondly, it should be noted that medical records are legal documents. As such, they fall under the "best evidence rule". "The 'best evidence' rule requires that where it becomes necessary to prove the contents of a paper, the **original** must be produced.."⁷

⁵ JCAH *ibid* page 90-91.

⁶ Federal Register, Oct. 18, 1966; Jan. 7, 1967; redesigned Sept. 30, 1977; June 17, 1986. See Condition of Participation section 482.24.

⁷ Hayt, E., *ibid.*, page 166

There are penalties for altering, tampering with, or otherwise destroying medical records. Among the possible actions that may be taken against an individual for this are: 1) subjecting the individual to disciplinary action or suspension of licence 8 2) possible perjury charges 9 3) criminal charges of obstructing justice or of fraudulent misrepresentation 10, and 4) even possible theft charges.

Another issue which emerged was that the autopsy record in question was not under "constant surveillance".¹¹ I interpret this to mean that under normal circumstances a medical record is held within the medical records department, under secure conditions, and is protected from unwarranted changes, obliterations, removal or destruction. Obviously, in a court this unaccounted for time period would be suspect, i.e., the time the autopsy record was away from the hospital and its protection.

The main point I have been trying to make is that the autopsy record belonged to the naval hospital. It was their property, and they had a duty to protect it. Dr. Humes was outside of his authority to remove the record from hospital grounds as the record was not his property, but rather hospital property. That destruction of this original record falls outside the accepted norm from how medical records are handled. Original records, if inaccurate or incomplete, are corrected by the means specified above or are amended. Original records are not destroyed and then re-created.

On a personal note, I hope this letter finds you well. My father is doing much better, I appreciate your asking.

I again hope that this information is useful to you in researching materials for your book. If any questions arise in reading this information, or if you need additional information or verification I hope that you will not hesitate to call me.

⁸ Hayt, E., *ibid.*, page 36.

⁹ Dixon, Marden., MD., JD., Medical Records Guaranteed to Ruin any Malpractice Defense. Medical Economics, April 4, 1977., page 81.

¹⁰ Hemelt, Mary D., and Mackert, Mary Ellen., Factual Medical Records Protect Hospitals, Practitioners, Patients. Hospitals., July 1, 1977, volume 51., page 52.

¹¹ Hirsh, Harold L., MD, JD., Legal Implications of Patient Records., Southern Medical Journal, June 1979, Volume 72, No.6 page 726.

When this book reaches publication please notify me, my husband and I would very much like to obtain a copy.

Sincerely,

Betsy Neichter

Betsy Neichter

/bn

enclosures