

## Labor & Delivery: Original Strips, Chart Notes Not Available, Court Sees No Spoliation Of Evidence.

The hospital was ruled not liable in a complex obstetric malpractice case involving hypoxic neurological injury to the newborn.

The Court of Appeals of Wisconsin ruled, among other issues, that no innuendo of wrongdoing could be drawn from the fact the original chart notes were destroyed after being copied on microfilm from which complete sets of copies could be made for the lawyers.

There was also no particular legal significance to the fact the original paper fetal monitor strips no longer existed.

The original monitor data was still stored electronically within the monitor's computer memory from which full sets of duplicate monitor tracings could be generated on paper strips and provided to the lawyers for use as evidence for the lawsuit.

The court also saw nothing wrong with the pertinent progress notes not being entered into the chart until days after the events in question, as that was the usual and customary practice at this facility with or without a potential lawsuit looming. **Chobanian v. Meriter Hospital, Inc.**, 2008 WL 4426747 (Wisc. App., October 2, 2008).

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***Spoliation of the evidence refers to documents relevant to a lawsuit being altered, lost or destroyed.***

***The judge and jury are allowed to infer that the documents would have been unfavorable to the party responsible for the spoliation.***

***Spoliation does not occur, however, and no particular inferences can be drawn one way or the other when original chart notes, monitor strips, films, etc., are copied on microfilm or stored in an electronic digital format and the originals are destroyed.***

***That is, originals relevant to the lawsuit may be copied and disposed of in the institution's usual and customary method in the ordinary course of business without legal prejudice.***

COURT OF APPEALS OF WISCONSIN  
October 2, 2008

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