

# The Legal Weaponization Of The Medical Record



By *Jamie Wells, M.D.* — September 26, 2018



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Lately, in the public sphere, anything documented in the medical record is being bandied about as the most damning of evidence to support perceived wrongdoing of whichever party is in play. Like most generalizations, nuance is essential and scratching the surface a must if the truth is anyone's intent to uncover. Conflating "patient said" with actual findings and full context is a dishonest game. There are many reasons individuals book doctors' appointments and make disclosures and they are as diverse and complex as the human species itself. Legitimate claims are fortunately the mainstay, but more dubious ones replete with ulterior moves aren't unheard of or rare and are routinely encouraged when lawyers enter the mix.

Consider divorce with children. As a pediatrician, I always knew who was getting a divorce before it was ever formally announced. In primary care, your job as a diagnostician is to put puzzle pieces together like a detective in a way. So, when long-standing patterns of parental behavior shift, alarm bells go off. Sudden appearance of both parents at multiple consecutive office visits is a huge tell that at least one divorce lawyer was hired. Sadly, the process for legal involvement in divorce and the actions nurtured by attorneys often emphasizes building a case, not building a resilient family. Among the first bit of advice parents receive from them is "make sure you go to each pediatric visit" ostensibly to show how much you are invested and care given the knowledge that pediatricians document in the medical record during any and all visits who accompanies the minor child. This supposedly valuable metric is then used in custody battles to prove "good parenting."

Like many "metrics" this one is flawed and idealized, and rarely an arbiter of who cares more for a child. Often, the parent who was the primary breadwinner would attend less doctor visits while the one not working or with a more flexible schedule would uphold the lion's share. This doesn't

necessarily mean one cares any less, it was typically what was agreed upon between partners and what worked best for that particular family. The notion this metric is an absolute win of any better parent medal is a myopic one. The former parent could be one in routine contact with the pediatrician insisting on speaking after every visit, present during the most significant and meaningful moments at the office (and in life) and the one with a greater bond to the child.

Advising parents during one of the most stressful periods of their life, the dissolution of a marriage, when they are most vulnerable to focus on case-building and constant documentation creates a false narrative that routinely contributes to acrimony and generates and propels hatred toward a spouse to such a degree that it fosters behavior that is reactive and destructive. It makes bad situations worse by compelling vitriol to center stage as the priority at the expense of love for the child. It promotes such negativity and venom which reverberates to harm all involved, especially the child. Allegations become rampant, substantiated or not, and can run amok invoking such an ugly time that does lasting damage.

This type of weaponization of the medical record comes in many forms. Think accidents, for another example. It is quite common for patients, once seeking legal counsel, to be prompted to make a doctor's appointment immediately no matter how far out of the event or whether with or without symptoms. Those who game the system will always be around and, unfortunately, they mostly make the struggles of those genuinely injured and traumatized more challenging.

The good news is there are ways to discern the wheat from the chaff. But, that involves, like any good diagnosis and superior disease management, not making knee-jerk assessments based on emotion or ignoring the many factual pieces of evidence to the contrary that formulate a comprehensive picture in context. Sweeping assumptions help no one. Examining the entire respective case respects the process and the players and is the only way to inform on a fair and honest conclusion.

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