

Committee Opinion
October 17, 1988

LEGAL ETHICS OPINION 1141

ATTORNEY/CLIENT RELATIONSHIP –
WRONGFUL DEATH: DUTY TO RETURN
IMPROPERLY OBTAINED MEDICAL FILES.

You advised you have been retained by a widow in a medical malpractice/wrongful death action. The client personally delivered to your office her husband's original file which she took from the treating physician's office without authorization. Since you have been in possession of the file which you had requested from the physician earlier, you have received correspondence from his office indicating that they could not locate the same medical records.

You wish to know whether it is your duty to return the medical records to the physician and whether the documents could be considered Aruits of a crime@ pursuant to *In re Ryder*, 381 F.2d 713 (4th Cir. 1967), DR:7-108(A) and DR:6-101(C).

Based on the facts you have presented, the Committee believes that the analogy between the Aruits of a crime@ as defined in *In re Ryder* and the medical records in your possession cannot be made. The *Ryder* case dealt with a criminal law matter in which the instrumentality through which a crime had been committed was concealed from the evidence in the case by the defense attorney.

The Committee is of the opinion that it is your obligation to advise client of your duty to return the file which is property of the treating physician's practice. You may also wish to copy the file in order to verify that you have returned the same. The Committee would direct your attention to LE Op. 278, which speaks to the inquiry you have presented. The Committee opined in that opinion that it was not improper for an attorney to continue representation of a client and to use a document obtained by the client's wife. The acquisition of the document may or may not have been authorized by defendant, as long as the attorney was not a conspirator or accessory to the illegal or improper obtaining of the evidence.

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