

## ***Client Records: Keep or Toss?***

One of the thornier issues of social work today involves the why, when, and where of keeping clinical records. While hospitals and social service agencies invariably follow strict procedures requiring the indefinite retention of records, solo or group practitioners are often left hoping for a bit more leeway.

And why not? A thriving practice can quickly accumulate documents, resulting in a storage problem within a matter of years. While it's tempting to consider weeding out the old to free up space for the new, the prudent practitioner will think twice before moving toward the shredding machine.

Questions typically centers on four issues:

- ◆ How long should clinicians retain their records?
- ◆ Where and how should inactive files be stored?
- ◆ What are the guidelines for retaining electronic (computer-based) records?
- ◆ What is the potential downside should old records be prematurely disposed of?

### **Months, Years, or Decades?**

The NASW Insurance Trust strongly recommends retaining clinical records *indefinitely*. Remember: statutes of limitations for professional liability are based on when the injured party first realizes or should have realized that the practitioner caused harmed. As this could mean decades after the alleged malpractice, disposing of files—ever—is potentially risky. (Social workers should also adhere to their state statutes on record retention. HIPAA has a requirement of six years for electronic records)

Swamped with inactive files? Keep them anyway. Cramped office? Find appropriate storage elsewhere. Offsite storage is less pricey and burdensome than a legal defense. Given the potential legal fallout stemming from premature disposal, adopting the minimally accepted standards in today's litigious environment seems unwise. Better to have a file and not need it, than to need it and not have it. In short, anticipate the unexpected—and be prepared.

According to "The Paper Office," there are additional reasons to retain client records:

- ◆ To ensure continuity of care when transferring clients
- ◆ To assist clients in later qualifying for other services
- ◆ To reactivate a case should a client return for treatment

### **Inactive Files: Where and How to Store?**

As long as inactive client files are stored securely—meaning away from public access and under lock and key—they may be kept in an office attic, in your home office, at a rental storage facility, or at another secure location. Such files should also be inaccessible to office staff and others who have no need to access the information. Choose your site with care. At home, children may be wooed by the taboo of personal secrets locked away in an unsupervised basement file cabinet. Rental facilities are only as secure as the lock on your storage door.

### **Guidelines for Electronic Records**

The guidelines outlined above also apply to electronic (or computer-based) records. Practitioners should consider these security precautions:

- ◆ Frequently back-up clinical information on your computer hard drive(s) by way of CDs, DVDs, Zip disks, or similar media. Make sure to safeguard these copies.
- ◆ Password-protect your office computers to keep unauthorized users (including PC repairpersons) from gaining access.
- ◆ Think twice about storing clinical information on PCs linked to the Internet. Motivated hackers could easily (and transparently) gain access to these records and compromise confidentiality.
- ◆ Ensure that non-authorized persons cannot read information displayed on office computer screens.

In "The Paper Office," the author notes that practitioners are ethically responsible for safeguarding the confidentiality of and access to records should he or she later become unable to care for them. His suggestion? Make provisions

with another practitioner for proper access to these records in the event of disability or death. (A will should be prepared by the social worker to include disposition of clients and records in the event of death.) On a related note, social workers should inform clients of how they may access their records. And, yes, practitioners should definitely retain the clinical records of clients who have since died for potential suits. “The Portable Ethicist” sums it up smartly: consider clinical records your “first line of defense.” As it wisely notes, judges and juries often operate on the premise that “absence of evidence is evidence of absence.” [see [www.socialworkers.org/hipaa](http://www.socialworkers.org/hipaa) and other HIPAA privacy, e-security standards]

### **Disposing of Records: Methods & Consequences**

Although state statutes frequently regulate how records should be disposed of, the Trust encourages record retention forever, if practitioners ultimately decide to dispose of clinical records—after the passing of relevant state statutes of limitations and state-imposed methods of disposal—they can shred or burn them, or contract with a professional disposal firm. Professional disposal firms should provide references, proof of bonding and insurance, and follow outlined disposal methods to the letter.

Practitioners who store records on computer should be aware that sophisticated hackers can often read data supposedly erased from hard drives—even after sophisticated data-erasure utility programs has been used. The only safe means of disposing of computer-based information requires first physically removing and then destroying the hard drive, preferably by smashing it and then burning the fragments. CD and DVD media should also be burned, as scratching them may not render them completely unreadable. In short, failure to properly safeguard confidentiality can result in a breach of confidentiality and in an adverse malpractice ruling.

[See [www.socialworkers.org/hipaa](http://www.socialworkers.org/hipaa)]

Again, the NASW Insurance Trust strongly recommends retaining clinical records *indefinitely*. One never knows when they might be needed and, as we live in a highly litigious age, preparing for the unthinkable makes sense.

### **Consulted Resources:**

“Prudent Practice: A Guide for Managing Malpractice Risk,” by Mary Kay Houston-Vega and Elane M. Nuehring, with Elisabeth R. Davuio, 1997.

Bernstein, B. & Hartsell, T. (2000). *The Portable Ethicist for Mental Health Professionals*. New York: Wiley.

Zuckerman, E. (1997). *The Paper Office, 2<sup>nd</sup> Edition*. New York: The Guilford Press.

### **Two additional resources**

**[NASW has a law note, “Social Work and Clinical Notes” by Carolyn Polowy](#)**

**[NASW has a practice update for the Private Practice Section Members only, “Documenting Patient Care in the Private Practice Setting” by Mirean Coleman](#)**

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