
THREE THINGS TO KNOW ABOUT: MAINTENANCE OF MEDICAL RECORDS

- 1.** Psychiatrists should review and be familiar with statutory, regulatory, and contractual obligations regarding records creation, retention, and discarding. In addition to federal law, including HIPAA, most states have statutes and/or regulations governing the creation, maintenance, and discarding of patient records. Even when such requirements are absent, it is the standard of care to create and maintain a record for each patient. The safest and most conservative option is to never destroy patient records.
- 2.** Understand that you cannot absolutely rely on your state's statute of limitations for medical malpractice or the statute of repose to protect you from legal actions. Depending on the nature and wording of a complaint, a legal action may be brought against you even though it is not brought within the limitation period. Additionally, the records of minors and patients with some other legal disability or incompetence may fall under statutory tolling provisions. This means that for some patients, the time in which a lawsuit may be filed is extended.
- 3.** Psychiatrists should develop and implement a retention schedule and written policies and procedures for destroying records. Following an established procedure may help to mitigate future potential allegations that a record was destroyed in order to conceal unfavorable information; however, this will not guarantee that you will be protected in situations in which you, yourself need a patient's record, such as to defend a licensing board complaint. Never destroy records involved in open litigation, investigation, or audit.

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