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Managing Your Practice

Advisory No. 1B

“How long do we have to keep medical records?”

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How long to keep medical records is the most common question asked of MIEC's Loss Prevention Department. It is difficult to answer the question exactly because, among the states in which MIEC insures physicians, there are few laws that address this issue. The chart on page three shows each state's laws and MIEC's recommendations.

What attorneys advise

“Keep medical records forever,” is the advice of many malpractice defense attorneys, because the records may be needed in the physician's defense in a malpractice action, or patients and their subsequent treating physicians may need them for on-going care. Although state laws limit the amount of time an adult patient has to initiate a legal action (the statute of limitations), for various reasons courts do permit lawsuits to be filed years after the statute of limitations has expired. Without the medical records to corroborate the physician's treatment years before a suit was filed, the doctor's defense could be compromised.

Malpractice actions that allege a delay in diagnosing cancer, heart disease, or neonatal injuries, or product liability cases that involve medication related injuries may be filed after the statute of limitations has run, if the plaintiff can prove that he or she could not reasonably have discovered the alleged injuries earlier. Sometimes, old medical records are needed by patients or family members for the treatment of a current disease or condition. Keeping medical records forever ensures they are available for these contingencies.

Alternatives to “forever”

For many physicians, keeping medical records forever is not practical or physically possible. MIEC's defense attorneys recommend that physicians retain most medical records for *at least eight to ten* years after the patient's last medical treatment. Some records ought to be retained for as long as 25 years, such as in cases in which the patient:

- suffered significant complications of treatment or surgery;
- had traumatic injuries that could or did result in major disability; or
- was being followed for a pregnancy.

In general, physicians can destroy the records of patients who have been deceased for five years or more, when death was unrelated to care

Minors’ records

Most states require that minors’ medical records be retained at least until the minor patient reaches the “age of majority” (18 years), plus an additional period of time that varies from state to state. As with adults’ medical records, defense attorneys suggest that minors’ records be retained for at least eight to ten years after the date of the patient’s last treatment. Depending on the age of the patient at the time of the last treatment, it may therefore be prudent to retain a minor’s medical record beyond the statutory retention period mandated by the state in which you practice. For example, a physician in California is only required by law to retain a minor’s record until the patient reaches age nineteen (19). If the patient was age fourteen (14) at the date of the last treatment, they would reach the age at which their record is required by law to be re-retained after only five years. The prudent physician may wish to retain the record for an additional three to five years to be in keeping with defense attorneys’ recommendation that records be kept for at least eight to ten years after the date of last treatment.

Hawaii’s 25-Year retention law

Hawaii law requires that medical records be retained for a minimum of seven (7) years after the last entry. After seven years, medical records can be destroyed, but basic information must be retained for twenty-five (25) years after the last chart entry. “Basic information” includes the patient’s name and birth date, a list of dated diagnoses and intrusive treatments, and a record of all drugs prescribed or given. Medical records of minors must be retained for seven (7) years after the minor’s eighteenth birthday; “basic information” must be retained twenty-five (25) years after the minor’s eighteenth birthday.

Storing records after retirement

Physicians who retire from practice should store medical records in a safe place. Records can be copied to microfilm or scanned onto read-only CD disks or other permanent storage media that cannot be altered. Caveats: a responsible person should transfer the records to the storage medium; use clear identifiers for easy information retrieval; use a storage medium that has a long-term shelf life; store the media in a safe place. Alternatively, the retiring physician can ask another doctor to serve as custodian of the records. The custodian must agree to preserve the records for the required or recommended time and to make them available in response to subpoenas or authorized requests for copies from patients or others. **Note:** *Physicians who sell their practice cannot sell their medical records to another physician. The physician could, however, become custodian of the records.*

How to safely discard records

Medical records, in both paper and electronic form, must be disposed of in a manner that protects patient confidentiality. Ideally, paper records should be shredded or incinerated by a commercial document destruction service. The local hospital may have the capacity to safely dispose of the charts. Whenever hardware or back-up media containing confidential information is disposed of, use software to “wipe clean” or reformat the disk drive or back-up tape. Simply using the “delete” function on most computers frees up that disk space for reuse but does not actually delete the data. Do not place old medical records, in paper or electronic form, in ordinary, open trash bins for curbside collection.

Train yourself and your staff on the art of clear communication and thorough documentation by ordering and reviewing MIEC’s Do-It-Yourself Loss Prevention Survey on CD ROM. Or, request an on-site Loss Prevention Survey tailored to your practice and staff. MIEC’s Loss Prevention CD, literature, and surveys are offered free of charge to MIEC’s policyholders.

Retention laws by state

	ALASKA	CALIFORNIA	HAWAII	IDAHO
Adults’ medical records	No law. MIEC recommends 8-10 years.	Law: 2 years for patients insured by a Knox-Keene health plan. MIEC	Law: minimum of 7 years.	No law. MIEC recommends 8-10 years.

		recommends 8-10 years.	“Basic information” must be retained for 25 years	
Minors’ records	Law: Age of majority (18 years) plus two years. MIEC recommends to first satisfy the legal requirement. Then, retain 8-10 years beyond date patient was last seen.	Law: Age of majority (18 years) plus one year. MIEC recommends to first satisfy the legal requirement. Then, retain 8-10 years beyond date patient was last seen.	Law: Age of majority (18 years) plus 7 years. “Basic information” must be retained for 25 years after 18th birthday.	Law: Age of majority (18 years) plus 2 years. MIEC recommends to first satisfy the legal requirement. Then, retain 8-10 years beyond date patient was last seen.
Medicaid	Law: 7 years. MIEC recommends 8-10 years.	Law: 3 years. MIEC recommends 8-10 years.	No law. MIEC recommends 8-10 years	No law. MIEC recommends 8-10 years
Prescription information	No law.	Certain information pertaining to prescriptions of schedule II controlled substances and dispensing of schedule II and III controlled substances must be retained for three years. (Health & Safety Code §§11190, 11191, 11168)	No law.	No law.

Get advice from MIEC

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“Do-It Yourself Loss Prevention Survey” CD ROM

[Get a complimentary copy](#) of MIEC's "Do-It-Yourself Loss Prevention Survey" CD ROM.

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