I am excited to write this inaugural “Counsel’s Corner” addressing day-to-day legal issues impacting the practice of psychology. Psychologists are aware of their obligation to create, retain and dispose of patient records in compliance with the law, as well as institutional and contractual requirements. (See APA Ethical Principles and Code of Conduct (2017), Section 6.01.)

But how long should records be maintained, and why not keep them indefinitely? The increased risk, costs, and ethical concerns of a policy that does not provide for the scheduled destruction of treatment records will have to wait for another time. The minimum for any retention policy may be determined by statute or regulation, as well as institutional and contractual requirements, the psychologist’s risk tolerance, and in some cases, relevant statutes of limitation.

Under California’s Psychology Licensing Law, psychologists must maintain patient records for a minimum of 7 years, or until the patient reaches the age of 25, whichever is longer. (See Bus. and Prof. Code § 2919.) However, depending on the payer source, the minimum retention period may be longer. Psychologists who provide services under Medi-Cal or any other program administered by the DHCS, must maintain records for 10 years from the final date of the contract period between the plan and the provider, the date of any audit completion, or the date of service, whichever is later. (Welf. & Inst. Code § 14124.1.) Providers of services under Medicare Advantage contracts must also retain records for a minimum of 10 years from the end of the final contract or the completion of an audit, whichever is later. (42 CFR 42 CFR § 422.504.) In addition, it is recommended that providers of services under original Medicare retain records for a minimum of 10 years (see Cochise Consultancy, Inc. v. United States ex rel. Hunt, 139 S. Ct. 1507 (2019)).

Psychologists who provide services to children in certain high-risk situations may wish to preserve records to guard against claims of sexual abuse which may be commenced as late as 22 years after the date the plaintiff turns 18. Psychologists may wish to seek qualified legal counsel for individual guidance in determining a sound records destruction policy.