



Making Ethical Decisions about Client Records

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Do you keep your client records indefinitely, shred them as soon as you are legally able, or have a records retention policy that is a hybrid of the two approaches?

APA Practice Organization advises that, when state guidelines are not provided, we “may consider maintaining full records for seven years after the last date of service or for three years after a minor patient reaches majority, whichever comes later” (2008). California law, however, does address this issue. Business and Professions Code Section 2919, states client records are to be retained for a minimum of seven years from termination or, in the case of a minor, seven years from the date the former minor client reaches 18 years of age (2012, p.54). If California law allows, but does not mandate, disposing of records after a certain period of time, can choosing to NOT destroy records be problematic? It depends!

Certainly we would be within legal guidelines to dispose of client records once the mandatory time period for preserving them has passed. In general, this policy would also be within ethical guidelines (APA, 2010). However some situations call for additional ethical consideration and could result in a choice to keep records beyond the time frame specified in the law. APA’s Record Keeping Guidelines offers a perspective on why a decision might be made in favor of longer records retention while also noting that “...both costs and benefits for the recipient of psychological services and for the psychologist...” are “inherent tensions” (2007, p. 999):

“The retention of records may serve not only the interest of the client and the psychologist but also society’s interests in a fair and effective legal dispute resolution and administration of justice, when those records are sought to illuminate some legal issue such as the nature of the treatment provided or the psychological condition of the client at the time of services” (2007, p. 999).

When faced with a decision about whether or not to maintain records longer than the mandated time period, there are cautions. Again, APA’s Record Keeping Guidelines can be helpful. Guideline 7 refers to the concern that “obsolete or outdated information” contained in records retained longer than the legal timeframe can be prejudicial if released (2007, p. 999).

The potential for retaining “obsolete or outdated information” can be illustrated in the case of a client, robbed at gunpoint while employed as a bank teller, who sought treatment experiencing severe PTSD symptoms including hallucinations and dissociative flashback

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episodes. With treatment, the symptoms resolved, and the client returned to his previous level of functioning. If these symptoms were later disclosed to a potential employer and reviewed by someone unqualified to understand their context, the client could be harmed through a misinterpretation of his mental health. Reference to the risk of creating “a negative impression of the client” was recently reported by Strum (2012).

Many times psychologists are called to work with individuals who are in crisis or have suffered significant stress from some life event. Particularly when records are maintained beyond the mandatory legal time period, client records should accurately document these external factors and reflect the situational context in which the record was created so that a client’s “enduring psychological characteristics” are not misconstrued, (APA, 2007, p. 999).

Confidentiality is also important to consider in client record policy decisions. A recent APA Practice Update (2008) suggested that the longer records are kept, the “greater risk you may face that confidential information could be revealed” such as through a subpoena in litigation where the client’s mental health is at issue or if the client, applying for a job or insurance, must authorize access to mental health records (APA, 2008, para. 8).

While client considerations are vital, psychologists’ interests are also relevant. In contrast to the bank teller client, consider the client who, by mutual agreement, terminated treatment seven years ago. While there has been no therapeutic contact since that time, the former client has left several voice mail messages indicating dissatisfaction with the treatment received. A psychologist might choose to keep this record beyond seven years as part of a risk management decision in case allegations arise concerning this client’s treatment.

While establishing a client record disposition policy can initially seem straightforward, it can actually be quite complex and have significant implications for the client and psychologist. When choosing to maintain records longer than the legally mandated time period, “competing considerations” between client and psychologist protec-

tions call for thoughtful decisions guided through consultation with colleagues, the CPA Ethics Committee, APA and legal resources. 

References

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