Keeping Records in the Face of Disaster
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The hurricanes of 2005 that devastated New Orleans and the Gulf Coast raised the awareness of California psychologists about the potential impact of natural disasters in our earthquake prone region. Especially relevant for psychologists is the issue of keeping, maintaining and protecting records in case of a catastrophe. As one psychologist reportedly asked, “how do you protect the confidentiality of psychotherapy records after you see them floating down the street?” (Personal communication, Gilbert Newman, Ph.D.) The United States Geological Service (ND) has estimated that there is a “62% probability of at least one magnitude 7.0 or greater quake, capable of causing widespread damage, striking the San Francisco Bay region before 2032” and scientists have made similar predictions for a major earthquake in Southern California as well.

The American Psychological Association Ethical Principles Of Psychologists and Code of Conduct (2002) 6.01 Documentation of Professional and Scientific Work and Maintenance of Records states that “Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law.” Section 4.01, Confidentiality notes that psychologists are also expected to “take reasonable precautions to protect confidential information obtained through or stored in any medium.”

Nevertheless, the Ethics Code does not specifically address the obligations for maintaining confidential records in the event of a natural disaster. So what guidance can the Ethics Code offer under circumstances where an earthquake related fire destroys boxes of records stored in the garage or damages computers with patient data? Throughout the Ethics Code, a number of qualifiers are used. These qualifiers are intended to permit psychologists to use professional judgment and guard against unreasonable expectations or to hold psychologists accountable for situations outside of their control. In addition to specific guidance from the Ethics Code, psychologists are encouraged to consider other materials or guidelines as well (APA, 2002).

Although not all psychologists are covered entities, HIPAA offers some guidance in terms of expectations. A contingency plan should be in place for responding to emergencies. Covered entities are responsible for backing up their data and having disaster recovery procedures in place.” (Wikipedia, ND). Backing up electronic data to different locations is easy to do in the computer age, and doing so would be consistent with our ethical obligation to maintain record. Protecting paper documents can be more difficult, however psychologists should be aware of their ethical obligation to attempt to do so.

Although not adopted as of this writing, the APA is considering record keeping guidelines. These proposed guidelines encourage psychologists to keep paper records in a manner that can protect them from damage from fire, water or insects by storing documents in cabinets that can protect them from these elements.

In addition to considering storage, confidentiality of records must be maintained by properly disposing of records that are outdated or no longer valid. Effective January, 2007, psychologists in practice are required to maintain patient records for seven (7) years or until a minor patient turns age 25, whichever comes later. Although this is a minimum, and not a maximum requirement, the APA Record Keeping Guidelines (1993) notes that psychologists “are attentive to situations in which record information has become outdated, and may therefore be invalid, particularly in circumstances where disclosure might cause adverse effects.” shredding documents on a timely basis may certainly facilitate preventing very old records from surfacing in the event of a disaster, and Ethics Code section 6.02(b) suggests the need for developing safe and reasonable protection of computer records, such as “coding of other techniques to avoid inclusion of personal identifiers.”

Maintaining and protecting the confidentiality of records is a legal and ethical obligation. Every California psychologist should review his or her maintenance and storage procedures to ensure that the event of a disaster, records will be safe and available.

References

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