

Legal Q/A

by Bruce E. Wood, Esquire

Legal Obligations:

Patients' Medical records

Q: What are my legal obligations with respect to the maintenance and preservation of medical records for my patients?

A: A physician is required by law to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, however, a physician may transfer an original mammogram to a facility or another physician and in that case is not required to maintain either an original or copy. The failure to maintain accurate medical records is an act of professional misconduct that can lead to severe disciplinary penalties by the Office of Professional Medical Conduct (OPMC).

Under New York law, a physician must maintain patient records for at least six years from the date of the patient's last visit. A physician must keep obstetrical records and records of children for at least six years or until the child reaches the age of 19, whichever is later. For example, if the patient is 16 years old on the last visit, the physician would have to maintain the medical records until the patient is 22. If the patient were 5 years old, the medical records would have to be maintained until the age of 19. As a general rule of thumb, the New York State Medical Society advises physicians to maintain all patient records for at least seven

years as an added safeguard.

Some HMO provider contracts require a different, often longer period of record retention. Under Department of Health contracting guidelines, HMOs must require physicians to maintain medical records at least six (6) years or, in the case of minors, for a period of six (6) years from age of majority. Therefore, while state law would require that the records of the 16 year old patient be retained until age 22, the physician's HMO provider contract may require that those records be retained until age 24, or even longer if specified in the provider contract.

Quite often, a retiring physician will transfer the care and custody of medical records to another physician or group practice. The retiring physician should insist upon a written contract requiring the custodian to preserve the records, and permit access to them, as required by statute.

The new requirements under the Health Insurance Portability and Accountability Act (HIPAA) will have a significant impact on the physician's obligations with respect to patient medical records, but do not change the retention requirements under state law.

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