

Retention and Destruction of Medical Records

Anne M. Menke, RN, PhD
OMIC Patient Safety Manager

Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

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While ideally medical records should be kept forever, this is not always practical. To ensure that present and future patient needs are adequately met, and that allegations of malpractice can be successfully defended, follow these guidelines.

Retention guidelines

- Have a written retention and destruction policy in place, and train employees in its use. The physician must approve the policy. Indicate the date the policy was written or revised, and keep copies of former policies.
- Consider any material related to patient care to be part of the record (such as billing records, appointment schedules, etc.).
- Adult patients: ten years after the last contact with the practice
- Minor patients:
 - 10 years after the last contact with the practice OR
 - 4 years beyond the patient's 18th birthday, **whichever is longer**
- Deceased patients: 5 years after the patients' death
- Incompetent patients, whether adult or minor
 - Retain records indefinitely OR
 - 5 years after the patient's death
- Records related to an incident that could lead to litigation or that have been requested by an attorney or administrative agency
 - Until the matter has been fully resolved AND
 - Only with the advice of OMIC or your assigned attorney

- This prevents allegations of spoliation of evidence, which occurs when someone with an obligation to preserve evidence with regard to a legal claim neglects to do so or intentionally fails to do so. This can happen by destroying or losing medical records, and can lead to sanctions which vary from state to state.
- Other laws and regulations may apply in the following circumstances (e.g., Medicare, OSHA, managed care patients). Check with the appropriate authority to ensure that your retention policy meets their guidelines.

Destruction of medical records

- The physician must approve any decision to purge and destroy records.
- Keep a list of destroyed records that includes: the patient's name and date of birth, date of the last visit, and date the records were destroyed.
- The method of destruction must protect the confidentiality of this information, such as shredding or burning.
- Disposing of records in the trash does not provide adequate protection, and could lead to allegations of breach of confidentiality.

Need confidential risk management assistance?

OMIC-insured ophthalmologists, optometrists, practices, and surgery centers are invited to contact OMIC's Risk Management Department at (800) 562-6642, option 4, or at riskmanagement@omic.com.