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PATIENT RECORDS: HOW LONG TO KEEP THEM

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One of the most frequently asked questions of a speaker at risk management seminars is, "How long should I keep the records of my patients?" The answer is, "It depends." Consider the following:

1. If you intend to keep them for the shortest period of time to comply with the local law of the jurisdiction, you would have to determine what the local law requires. For example in New York dentists and other health practitioners are required to maintain patient records for six years, and for minors for six years or until the minor reaches majority and then for another three years, whichever is longer. Although the regulation does not make any statement about the records being the original records rather than copies, I believe the intent of the regulation is to have the practitioner retain the original records. The matter of computer records has not drawn the attention of the regulatory agency nor the courts. It is my opinion that if it can be shown that the information entered on the computer record can not be altered once entered it may satisfy the regulation.
2. If you decide that you might need your patient records to defend a claim of malpractice brought against you by a patient, you might look at the statute of limitations for malpractice actions in your jurisdiction. Again looking to New York, the statute of limitations for malpractice actions runs for 2 1/2 years from the time the incident claimed to have caused the injury to the patient. New York, like other states using the time of the incident, are called occurrence states. But New York, like all other occurrence states that begin the running of the statute from the time the incident causing the injury took place include exceptions that toll (delay), the running of the statute: continuous treatment; and a foreign object left in the body, e.g., the tip of a reamer of file during a root canal procedure. However, in many states the statute of limitations does not begin to run until the patient discovers, or should have discovered, that an incident took place causing an injury. These are called discovery states.

And so, the bottom line is that to practice with the lowest level of legal risk, assuming that your records will serve to support your defense should a claim of malpractice be brought against you, is to keep your patient's records for as long as you practice, and then add another 10 years.

But we all know that keeping patient records forever is impractical. A more practical suggestion is to keep the records for ten years after the last patient visit, and for minors for fifteen years after the last minor's visit. The likelihood of suit in malpractice being instituted after ten or fifteen years is remote.

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Dr. Pollack received his dental and law degrees from the University of Maryland, and his degree in Public Health from The Johns Hopkins University. At the University of Maryland he served on the faculty of the dental school for 27 years. He organized and served for 10 years as Chairman of the Department of Community Dentistry. Dr. Pollack practiced dentistry for 27 years in Baltimore, and was admitted to the practice of law in Maryland in 1960. In 1976 he joined the faculty of The School of Dental Medicine at Stony Brook. In January of 1993 he was appointed Dean of the school. Dr. Pollack is a member of the Professional Liability Claims Committees of two local dental societies, as well as consultant to several insurance companies that provide professional liability insurance to dentists. He is the author of approximately 100 articles, has contributed 12 chapters to texts in the field, and was editor of the text, *Dental Jurisprudence and Risk Management*. Dr. Pollack is the major contributor to the *Risk Management Newsletter* published quarterly by the National Society of Dental Practitioners.

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