

MACM Risk Management

Retention and Destruction of Medical Records

Over the course of a medical practice, due to storage, fiscal restraints, or the sale of a practice, it may become necessary to destroy the paper files of *inactive* patients. Unfortunately, there are no regulations that define an inactive patient or cover retention and destruction of office records in private practice clinics.

There is a statute of limitations in Mississippi for medical malpractice cases; however, this statute has been interpreted very liberally in many instances. Thus, it is possible that legal action can be taken long after the established statute of limitation has expired.

If records are destroyed and legal action is taken later, the best evidence for your defense is lost. A legal presumption will arise that those records supported the plaintiff's claims.

Destruction of *inactive* files of office patients must be done in a methodical manner. Records must be destroyed in a manner which assures there will be no breach of confidentiality during the process. There are reputable businesses that specialize in information destruction and follow strict guidelines in order to protect the confidentiality of the documents.

Develop a clinic policy outlining how long the clinic will retain a paper record. The policy should

1. Define "inactive patient". Set a time frame for the length of time since a patient's last visit that will put the patient in the inactive category. Once a patient meets the time frame, the record may be destroyed.
2. Develop a schedule for regular review and destruction of records.
3. Clearly document how the record will be destroyed. If a company is utilized to do this, be aware of the process used and that the appropriate contract(s), such as a HIPAA Business Associate Agreement, is in place. Have a healthcare attorney assist with this.
4. Provide a specific process for cataloging records that are destroyed. Include more than one identifier on this list such as date of birth and/or social security number. Maintain this list indefinitely.
5. Contact MACM if a request is received for records that have been destroyed.

Do not retain only parts of a record. The Mississippi Board of Medical Licensure defines the medical record as

"...all records and/or documents relating to the treatment of a patient, including, but not limited to, family histories, medical histories, report of clinical findings and diagnosis, laboratory test results, x-rays, reports of examination and/or evaluation and any hospital admission/discharge records which the licensee may have."

MSBML Part 2635, Chapter 10: Release of Medical Records; Rule 10.1

If it is felt that any part of the record is important enough to keep, the entire record should be retained. Our best advice is keep them as long as they can be kept.

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