



Record Keeping

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Record keeping - how long should you keep your notes? What happens if you work in a clinic who owns the notes? What happens if you leave a clinic or stop your practice? What about the Data Protection legislation?

The reality is that there can be overlaps or contradictions in the different types of law. Data Protection legislation, Contract Law, the Criminal law and Human Rights legislation are there to prevent abuse but they can cause confusion especially with regard to what you should do as part of your contract with the insurance company in complying with policy terms and conditions.

The Data Protection Act says you should keep records for no longer than necessary (although they don't define how long that is!). The core purpose of the Act was to stop people abusing data held and using it for unethical purposes. On the other hand, we could say that you have a human right (protected by law), to have a livelihood and it is a condition of your policy (Contract Law) that records be kept in order to defend you. Similarly the statute of limitation (Civil Law or Tort) extends the possibility of an action against you beyond the time limits of the data protection act as well as dictats of the Criminal Law -so which one should you obey?

We recommend that you keep patient records indefinitely, particularly those for minors. This applies even when you have referred the patient on, or you have left the practice where you administered the treatment. Although in most cases the statute of limitation that applies for late discovered situations leading to an allegation of negligence could be **3 or 6 years from the date of discovering a problem**, there are certain situations where the limitation period could be much longer.

In the case of minors, there is no statute of limitation, for when a case may be brought. Even if the policy only requires 7 years, clearly in some cases this may not be enough, and in the case of people with learning difficulties and in certain other situations, there is no statute of limitation and the Courts can overturn limitation periods.

Your patient's case notes and records are your property, and you must retain them even if you move to another practice. If, as a clinical supervisor, you oversee a student's work under your professional practitioner insurance, the patient's records are yours. Although a patient can by written application seek access to notes they have no legal rights of ownership. However, if a patient requests a copy of their notes, you must follow the procedure laid out in the Data Protection Act 1998 and keep a record of this on the file. Your Insurance policy may require you to keep records for 7 years, so it is important that you know where they are at any time in order to fulfil the requirements of your insurance to defend an allegation against you.

Think ahead! You may want to appoint someone in your Will or any Power of Attorney arrangement you may have set up to be able to have access to the records if you are too ill, disabled or incapable of accessing them. Your Will should include such information so that if your Estate was challenged after your death, the policy would be called upon to defend it and would be able to do so.

On selling or otherwise transferring your practice, you may pass on the original records if (a) the new owner will be subject to the same or similar rules to those referring to Case Notes above and (b) the patient is informed in writing in advance of the transfer and given the opportunity to object, in which event you must retain the original records.

You must also ensure that patients are kept fully informed and offered appropriate choices about their continuing care and the safe keeping and location of their original records. As it will be your policy that will defend you for previous work performed, you must ensure that the notes can be easily accessed or that you have copies, in order to fulfil the terms of the policy and in any event to allow yourself to be defended whether by the insurers - or anyone else.