

Ethics Interface

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The column is meant to be an educational forum for life care planners. It is not designed to offer an authoritative opinion from the editor or editorial board of the Journal of Life Care Planning, the board of the International Academy of Life Care Planners, or the board of its parent organization, the International Association of Rehabilitation Professionals, nor is it designed to represent or replace official opinions from the certifying body of other organizations associated with the practice of life care planning.

Dilemma

I was advised that the case I worked on settled and I was directed to “shred the records.” Does this pertain to my own working file? If I keep these, is this a violation of our standards?

Response

Official guidelines will vary by the jurisdiction relative to a specific case. Often, there are professional conduct rules for attorneys. For example, the Minnesota Judicial Branch “allows the destruction . . . after records are no longer needed at the court” and sets no specific time parameters (Minnesota Judicial Branch, 2022). Oklahoma legal professional guidelines state, “There is not a universal rule. ORPC (Oklahoma Rules of Professional Conduct) 1.15 requires account records and other client property be kept for (5) years after termination of the representation. A good general policy is seven years, assuming other law does not apply, and there are not special circumstances” (Oklahoma Bar Association, 2022). In Idaho, the rule regarding safeguarding property (which includes client files) for attorney records is also located in Idaho Rule of Professional Conduct 1.15 (Idaho Rules of Professional Conduct 1.15, 2022). That rule, like Oklahoma, requires retention for five years after termination of the representation. Specific rules may also apply to other professions. For those who are covered under the Health Insurance Portability and Accountability Act (HIPAA Journal, 2021), records retention is for a minimum of six (6) years from the time the record was created (CFR §164.316(b)(1)).

Follow the direction of your retaining attorney and shred the records that were provided to you. It is likely a wise business decision to keep a copy of your report as it is your

personal work product, or any documents you may want to use in the future to defend a potential malpractice claim or to explain a particular decision. Check the law of your state to determine the limitation period for malpractice actions, and retain the records beyond that time to assure they are available in the event a claim is filed. It is, of course, critical that any records are destroyed in a manner that assures confidentiality.

Relevant Organizational Standards

From the Commission on Rehabilitation Counselor Certification (CRCC) Code of professional ethics for rehabilitation counselors (Commission on Rehabilitation Counselor Certification, 2017)

B.6.e. STORAGE AND DISPOSAL AFTER TERMINATION

Rehabilitation counselors store records of their clients following termination of services to ensure reasonable future access. Rehabilitation counselors maintain records in accordance with organizational policies and laws, including licensure laws and policies governing records. Rehabilitation counselors dispose of records and other materials in a manner that protects client confidentiality. Rehabilitation counselors apply careful discretion and deliberation before destroying records that may be needed by a court of law (e.g., notes on child abuse, suicide, sexual harassment, or violence).

International Academy of Life Care Planning Standards of Practice (International Academy of Life Care Planners, 2015)

IV. Standards of Practice

10 STANDARD: The life care planner may engage in forensic applications.

- c. Maintains records of research and supporting documentation for content of the life care plan for a period of time consistent with requirements of applicable authoritative jurisdictions.

From ICHCC-Practice Standards and Guidelines (International Commission on Health Care Certification, 2020)

Guidelines

Principle 6 - Confidentiality ICHCC Certificants shall respect the confidentiality of information from evaluatees, their representatives and any other sources.

R6.4 ICHCC Certificants shall not engage in any acts or omission of a dishonest, deceitful, or fraudulent nature in the conduct of their professional activities.

From the CDMS Code of Professional Conduct (Certification of Disability Management Specialists Commission, 2019)

- RPC 1.10 – Records

This rule applies only to those records for which certificants have responsibility during the course of their employment or practice.

a. Maintenance

Certificants shall maintain records necessary for rendering professional services to their clients and as required by applicable laws and/or regulations.

b. Storage and Disposal

Certificants shall maintain records after the file has been closed for the number of years consistent with jurisdictional requirements or for a longer period during which maintenance of such records is necessary or helpful to provide reasonably anticipated future services to the client. After that time, records shall be destroyed in a manner assuring preservation of confidentiality and as required by applicable laws and/or regulations.

References

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