STORING PRIVATE PRACTICE CLINICAL RECORDS:
AN ETHICALLY-BASED GUIDE FOR OHIO SOCIAL WORKERS
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INTRODUCTION

The NASW Code of Ethics (Social Workers’ Ethical Responsibilities in Practice Settings, 3.04 [d] Client Records, revised by the 2008 NASW Delegate Assembly) charges social workers to “store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts” (e.g., insurance companies). An ethical dilemma exists regarding who will manage paper or electronic files when social work practitioners become unexpectedly incapacitated or die (in addition to accessing confidential records when clinicians relocate or retire). Clients often do not know how to find their records if their clinician is no longer available. Do you know the ethical standards, laws, and licensing board requirements regarding private practice records?
FACTS AND ISSUES TO CONSIDER

Ohio Counselor, Social Worker, & Marriage and Family Therapist Board Laws and Rules, 4757-5-09 (A), (E), (I), (as of April 1, 2011) require that records be kept by licensees for *seven years* in a secure location with reasonable access following termination of clinical services. It is mandated that social workers shall “follow a prepared plan for transfer of clients and files...prepare and disseminate to an identified colleague or ‘records custodian’ a plan for the transfer of clients and files in the case of their incapacitation, death, or termination of practice”. The most recent revision adds that, “*Each licensee responsible for client files outside of an agency shall report to the board on the biennial registration (renewal) form the name, address, and telephone number of a licensee or other appropriate person...custody of and responsibility for records...*”

Authors of “*When a Clinical Social Worker in Solo or Group Practice Dies*” (Coleman, M. [November 2009]. Practice Update. Washington DC: NASW) and *The Paper Office*, (Zuckerman, E. [1997]. 2nd Edition. New York: The Guilford Press), recommend that private practice social workers seek advice from skilled mental health law attorneys to plan for ongoing records maintenance. Both encourage practitioners to prepare a “*professional will*” that includes instructions on how clients can access their records. A will would provide essential guidance for any executor who had to resolve paperwork concerns and pay business-related expenses. It is suggested that clinicians select a “*records custodian*” familiar with social work practices; otherwise, non-mental health trained executors may be managing confidential files. Clients could be given a form at intake that identified where their confidential records would be stored in the event of clinician incapacitation or death. Clients could also be informed that their confidential records would be safely destroyed after the required holding period ended. Following an incapacitation or death, public notices about records storage could be placed in the legal section of a local newspaper, individual letters could be mailed to affected clients, and a temporary message could be placed on the clinician’s voicemail and e-mail systems.

A HIPAA-compliant records management facility can be the designated custodian. An advantage of using a facility is that no modification would be needed if an individual could no longer carry out duties. Facilities have a certified record destruction policy. Clinicians could make direct pre-arrangements or leave instructions in their wills to pay for the facility retention and destruction services. Electronic records storage requires special security measures.

**SUMMARY**

Specific guidelines are needed to resolve the complex and important issue of private practice records storage. Compliance will benefit social workers, their estates, and clients.

- Designate an individual clinical practitioner or records management facility to be a *records custodian*.
- Write instructions for ongoing records management in a legal *professional will*.
- Notify clients via various methods about how to access their confidential records.