

Are You Prepared for the Unexpected?

by Corporate Relations and Business Strategy Staff

Most people are well aware of the need to have a personal “will” to protect their family when they die. But a “professional will” is another matter.

When a psychology practice closes because of unexpected death or disability, without a professional will, the psychologist’s family may be left to manage complex issues with little guidance. Planning ahead by having a professional will can ease the burden on family members during a difficult time. It also helps meet ethical and legal obligations to clients.

This article identifies and describes the key elements of a professional will -- a document that gives instructions to a designated mental health professional regarding your practice along with the authority to act on your behalf in the event of your death or incapacitation.

Name and contact information for your professional executor. Choose a trusted colleague to serve as your professional executor. Discuss with that person the instructions and responsibilities outlined in your professional will. It is also a good idea to identify a second colleague as a backup, in the event that the professional executor is unavailable or unable to fulfill his or her duties.

Statement giving authority to your professional executor. Clearly indicate that in the event of your death or incapacitation, you authorize your professional executor to act on your behalf and delegate responsibilities related to your practice.

List of your consultants and support services. Provide the names and contact information for your attorney, accountant, billing service, insurance carriers, answering service, and other practice consultants.

Name and contact information for the executor of your personal will. Your professional and personal executors will need to discuss a variety of issues and coordinate their actions to help your family close the practice and resolve your business affairs.

Location of your office. List the full address of your practice, as well as any other locations where records or practice-related documents are stored. If you keep any practice information at a home office, include that information as well.

Location and access instructions for practice information. Clearly describe the location of your client charts, appointment book, billing and financial records, and relevant computer files.

Indicate where to find keys to offices, filing cabinets, and storage units. Give instructions for accessing email, voicemail, and computer files. Be sure to list information such as login IDs, passwords, and PIN codes.

Instructions for notifying current and past clients. Specify how you would like your professional executor to contact clients and address with them the issue of your death or incapacitation. Decide how much information you want your professional executor to disclose to clients, including details about a funeral or memorial service.

Current clients should be contacted before their next scheduled appointment. Past clients should be informed by mail, phone, or a notice in the newspaper, so they will know how to access information in their records in the future, if necessary.

Referral Process. APA Ethical Standards require you to make reasonable efforts to plan for facilitating services for your clients in the event of your death or disability. Describe how you want your professional executor to follow up with clients and refer them to other mental health professionals to ensure continuity of care, as appropriate.

Handling of Client Records. Consistent with APA Ethical Standards, you should have a clear plan for transferring and maintaining the confidentiality of client records. This should include clear instructions for forwarding charts to new providers and maintaining records as required by state law.

Your professional executor should obtain written consent from clients before transferring charts. Records not being transferred to a new provider should be kept by your professional executor or another qualified mental health professional.

Record keeping laws vary by state, so you should contact the appropriate state psychological association and also consult with your attorney when drafting these instructions.

Storage or destruction of computer files. In addition to client records, you may have confidential client information stored on your home or office computer, PDA, or cell phone. Examples include information entered in practice management or test-scoring software, telephone and email contact lists, schedules, electronic copies of treatment notes or assessment reports, and email exchanges. Provide your professional executor with information about locating and accessing these files and clear instructions for saving or destroying them, as appropriate.

It is also important to recognize that the Health Insurance Portability and Accountability Act (HIPAA) Security Rule imposes standards for records storage and destruction. The APA Practice Organization soon will provide practitioners with information about the Security Rule, which takes effect in 2005. Stay tuned to future issues of this e-newsletter for additional details and guidance on the Security Rule.

Notification of relevant parties. Include instructions for notifying the licensing board, your insurance carriers, professional organizations, and any third party payers with whom you have contracts. Be sure to include the appropriate contact information for each party, as well as policy, license, membership, and provider numbers.

Announcement to colleagues, referral sources, support services, and staff. Identify the key individuals to contact and describe how you would like your professional executor to notify them. Indicate whether you want formal announcements drafted for professional forums and if so, where they should be posted.

Where to refer matters that require financial decisions. Consult with your attorney about this section of your professional will. The appropriate contact may be the executor of your personal will, a family member with financial power of attorney, or others, depending upon a variety of factors. Your professional executor needs to

have clear instructions regarding where to refer matters such as billing, receivables, and other financial accounts related to your practice.

Compensation for your professional executor. Your professional executor may feel uneasy accepting compensation and reimbursement for expenses, despite having provided a valuable service and investing considerable time and resources in managing your professional affairs. Discuss how your professional executor will bill your practice for time and expenses. Come to an agreement, and be specific about the arrangements in your professional will.

Location of other copies of your professional will. You should have several copies of your professional will. Keep the original with your personal will and give copies to your attorney and your professional executor. Provide a statement in your professional will about who holds the additional copies.

Signatures. Check with your attorney regarding the documentation and signatures necessary. In addition to your own signature, you may need to include signatures of witnesses or a notary.

NOTE: The information presented in this article is for informational purposes only and does not constitute legal advice. There are a variety of ways to structure a professional will and your decisions will have legal implications. State law may also limit or define how you can address some of these topics such as patient records. Therefore, you should consult with your attorney and make the choices that are best for you.