

PRACTICE ALERT

WHEN PRACTICE CEASES – TEMPORARILY OR PERMANENTLY

Advisory Notice: The following advisory constitutes a general discussion of the issues that may arise when a licensee ceases to practice. The discussion is intended to alert practitioners to questions and concerns that they may want to consider with their legal counsel, and is not to be construed as a directive or other requirement to take any particular action. The Advisory cannot be used as the basis for a charge of professional misconduct. The statements are generally based upon statutory and regulatory provisions relating to the practice of psychology, but are not legal interpretations of any of these provisions. The citations to the provisions are included to add clarity to the discussion. Practitioners are advised that if they decide to pursue any course of action based upon this discussion, private counsel should be consulted. There are many factors to be considered in designing a plan to deal with the termination of a practice. Among these factors is the mode of practice, i.e., – sole practitioner, partnership, professional service corporations, professional limited liability company, professional limited liability partnership. The legal structures involved in these practice forms may have a strong influence on the design of any practice termination plan. Moreover, there may be many issues germane to individual practitioners that should be considered. It is important, therefore, that private counsel be consulted in these matters since there may be legal issues beyond those directly inherent in the practice of psychology that should be considered.

A psychologist's professional practice may cease due to illness, disability, retirement, death, or as the result of a disciplinary action. This may occur either gradually or abruptly and may have profound ramifications. There are many legal, ethical, clinical and personal issues for the practicing psychologist to consider. An overriding issue is that psychologists have an obligation to their patients/clients to have an organized plan to insure that the termination of services does not create patient/client harm. An organized, comprehensive plan should ensure that the needs and rights of patients/clients are recognized and protected, which may be a fundamental aspect of competent service.

While psychologists frequently turn to the ethical codes of professional associations or consider other standards of good practice when planning for the termination of practice, they may not recognize the need to incorporate applicable laws, Rules, or regulations of professional licensing in those plans. The same general laws, Rules and regulations apply when practice is terminated, although differently in each situation. In preparing for a temporary or permanent cessation of a professional practice (including planning for a 'what if' scenario), psychologists should be concerned about patient confidentiality, the maintenance and disposition of patient records, patient abandonment, and limitations on the sale of a practice.

- **Patient Confidentiality¹**

§29.1(b)(8) Revealing personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law.

No personally identifiable information about a patient/client may be revealed to anyone without the patient/client's consent unless required by other laws or regulations. Psychologists are obligated to maintain the communications of their patients/clients as confidential. Psychologists should be aware of the laws regarding patient confidentiality when authorizing individuals to act on their behalf in maintaining patient/client records, collecting unpaid funds, and responding to inquiries about the patient/clients.

- **Patient/client Records²**

§29.2(a)(3) Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years."

Patient/client records must be maintained for at least six years and obstetrical records and records of minor patients must be retained for at least six years and until one year after the minor patient reaches the age of 21 years. This protects the rights of patient/clients, ensuring their access to information for treatment, legal or personal needs, and also protects practitioners in case of charges of professional misconduct or lawsuits against the practitioner's estate.

- **Confidentiality and the Transfer of Records**

§29.1(8) Revealing personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law.

Patients/clients possess the right to have all identifying personal information maintained as confidential. This mandate to maintain confidentiality applies to the psychologist who is responsible for assuring that all persons engaged or employed within the professional business practice maintains information needed by them in their work as confidential. For example, a secretary who does billing could have access to the name, address and other demographic information of a patient, but the psychologist would be responsible for preventing the revelation of this information by the employee. Personally identifying information and the contents of records should not be given to anyone outside the psychology practice without the consent of the patient/client, except as otherwise required by law.

The executor of an estate acts to carry out the wishes of the deceased psychologist and may implement or carry out the psychologist's directions regarding the patient/client. This can include creating a location where patient/client records can be stored, notifying patients/clients of the death of

the psychologist and the location of the records, seeking information from patients/clients regarding the disposition of records, and obtaining the consent of patients/clients to transfer records. To facilitate this process and to make certain that the executor of the psychologist knows if there are any patients/clients who should not receive their records without first applying to the Office of Record Access of the Department of Health, the psychologists would be wise to make a notation of this need on the patient's/client's file or to maintain a list of such patients/clients. Section 18 of the Public Health Law identifies specific reasons why patients may not have access to records and provides a means of appeal for the patients to obtain the records.

Records of patient/clients should not be transferred to other professionals without the consent of the patient/client, both to transfer the record and to permit the other practitioner to read the record. Patient/clients should have the option of receiving a copy of their record, having their record transferred to another practitioner of their choice, or leaving their record in storage. If the records are stored in the office of another practitioner, the patient/client should be notified of the location.

Whether records are transferred to another practitioner, sent to the patient/client, or stored elsewhere, the estate of the psychologist may wish to maintain an accessible copy since it is possible for the estate to be sued after the death of the psychologist. The record could become the estate's most important defense.

- **Patient/client Abandonment**³

§29.2(a)(1) Abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients.

The abrupt cessation of services by psychologists who unexpectedly become ill, disabled, or die normally would not be considered abandonment as it is defined, but appropriate planning for such events early in the professional relationship can ensure that patient/clients receive the essential services they need when such emergencies do occur. Psychologists who surrender or lose a license as a result of professional disciplinary action should also provide patient/clients with the means to obtain essential professional services.

The nature of the professional relationship between psychologists and patient/clients is commonly identified as "caregiving," implying that patients/clients may need the psychologist's direct assistance to successfully complete the termination process. In particular, patients/clients receiving ongoing psychotherapy require a process of termination that could take varying periods of time and may require

referrals to other practitioners, depending on individual patient's/client's needs. It would be wise for psychologists who know that their practice will end within a period of time to begin a timely termination process to enable patients/clients to complete their treatment or to find another treatment provider. In many instances, patients/clients will have to rely on the treating psychologist to learn about other providers or treatment centers. In addition, the plan should include the time necessary to write treatment summaries or prepare records for transfer to other practitioners at the request, and with the consent of the patient/client. Good and timely termination plans and activities may prevent complaints of negligence or incompetence.

- **Planning for the Unexpected**

Illness, injury or death may occur abruptly. To prevent harm to patients/clients and to assist others in implementing a transition plan, psychologists may want to consider identifying a person who would have access to names of patients/clients, the means of contacting patients/clients, the needs of each patient/client in the event of an emergency, and the process to follow in responding to requests for records or information about patients/clients. Those person(s) who are expected to implement these actions would need to agree to this arrangement and should know how to access addresses, records, and other files. Such persons would be acting for the psychologist and should be made aware of the laws, Rules and regulations regarding confidentiality and the use and release of records, as well as a patient's/client's right to access records.

It would also be wise for the psychologist to introduce the possibility of emergencies affecting the psychologist early in the professional relationship so that patient/clients/clients may know what to expect if such an event occurs. If appropriate, consent for the transfer of the patient/client's record to another identified psychologist could be obtained at that time.

- **Collecting Fees and Debts**

This commonly is the role of the executor of the estate. The psychologist may want to provide information to an executor that precautions are needed to assure that personally identifiable information about the patient/client is not revealed when collecting fees or debts. If collection agencies are used to collect fees, information regarding the professional relationship of the psychologist and the patient/client/client should not be revealed to the agency.

- **Selling a Professional Practice**

Psychologists who are planning to terminate a practice may consider selling the practice. The tangible assets of a practice may be sold, but the patient's/client's names and records may not be sold. Psychologists who wish to transfer patient/client records to another practitioner's care could do so by following the recommended process for making this kind of transfer, which includes patient/client consent for both the release of their name to the other practitioner, as well as consent for the other practitioner to view their records.

.

¹ Rules of the Board of Regents on Unprofessional Conduct

² Rules of the Board of Regents on Unprofessional Conduct

³ Rules of the Board of Regents on Unprofessional Conduct