

CREATING A PROFESSIONAL WILL

Creating a professional will fulfills an ethical—and in some places legal—responsibility for therapists and counselors. In the professional will, we provide a plan for what happens if we suddenly die or become incapacitated. It ensures that there is someone ready to respond to our clients' needs and the unfinished business of our practice. It gives them the information and authorization they need to navigate a time of shock, loss, confusion, and mourning. Not having a will in place puts us at risk of stranding our patients and colleagues, leaving them without access to vital records, schedules, contact information, and resources when our absence has stunned them with its suddenness.

The theme of therapists as vulnerable runs throughout this book. We therapists share many vulnerabilities. We can't wall ourselves off from the unexpected. A drunk driver, stroke, mugger, heart attack, fire, plane crash, and countless other jolts can strike us down without warning. As professionals whose services are critical to our clients, we bear an ethical responsibility to take the vulnerabilities that come with being human into account in our planning.

The best time to create a professional will is now rather than later. Yes, right now. Even with the best of planning and consultation, we cannot schedule the catastrophes that can suddenly take us out of action for a while or longer so that they will happen only at the end of our careers, or—better yet—long, long after retirement.

We must prepare for the possibility that something can happen to us—robbing us of our ability to function—at any time, with no warning. And if we

decide “not now,” making it take its place at the end that line of all those things we’ll take care of when we get a little free time, it may spend its whole life (and ours) growing old in that well-meaning to-do list. And if something happens to us in the meantime and we don’t have a will, we are leaving our patients and colleagues stranded.

There is no standardized, one-size-fits-all approach to creating a professional will that will work with every therapist or situation. Below we provide you with some steps that may be helpful in thinking through the process of creating a professional will that fit your individual needs, setting, practice, values, and resources.

WHO TAKES CHARGE?

Who will respond effectively to the needs of your clients in the event that you suddenly die or are incapacitated? Who can take care of things in a time of great stress and uncertainty? Who would do it with sensitivity and understanding that is required to navigate all the moving parts? Who would take care of the details, making sure nothing is overlooked? Who is the best person to talk with your clients?

A good and effective professional will name a qualified executor to carry out the will. It also answers the following four questions: (1) How can the executor be reached if your professional will suddenly becomes active? (2) What are their best contact numbers? (3) What are their office and email addresses? (4) Are there other people who will know where the executor is if they prove hard to reach?

WHO SERVES AS BACKUP?

Life loves surprises and sometimes refuses to cooperate with our plans. When it’s time to step up and take charge, the executor may be presenting a paper at a conference half a world away, struggling to handle a family emergency, recovering from a stroke, or otherwise unavailable. Second and third designees need to be ready to step in if needed. Yes, we need a plan A, B, and C.

COORDINATED PLANNING

Coordinated planning allows executors to carry out each step much more efficiently. You can meet with your primary designee and both backups to go over what needs to be done and provide the needed information. Someone may think of something that the others have overlooked.

What you may think “that goes without saying” or “You all know that bookshelf where I keep my appointment book, don’t you?” may actually need to be explicitly said. If designees don’t understand where something is, you can show them. You can introduce them to the people they will need to work with (e.g., your secretary, the executor of your personal will, your accountant, your attorney, your office landlord). They can exchange contact information with each other.

When wills are carefully planned, clearly outlined, and detailed, the executor will understand what to do when the time comes to carry out the professional will. You’ve left them a road map and the executor will know the key people to contact, where your records are, and so on.

YOUR OFFICE, ITS KEY, AND ITS SECURITY

The will should provide the *specific* location of each key to your office—for example, “There are four copies of the key to my office. One is on the key ring that I always carry with me. It is the key with the blue plastic on it. My partner, whose contact information is ..., also has a key to the office. My secretary, whose contact information is ... has a key. The building manager, who can be contacted in an emergency at ... has a key.”

Don’t forget any separate keys for each of the consulting room doors, the storage room, the filing cabinets, the desks, the computer, and the door to the building itself. Some of these may be easy to overlook but essential. If your office security systems require a code, be sure to supply both the necessary codes, instructions, and the system’s location.

YOUR SCHEDULE

We plan and then life happens. Several key considerations are important to consider when you plan to give the executor access to your schedule. Where is your schedule kept? Do you use a daily planner you keep with you, an appointment book at the office, on your computer or personal digital assistant? Once the record of your scheduled appointments is located, is additional information needed to access it? For example, if you keep your schedule on your computer, what passwords are used to log on and access the schedule, where on the drive is the schedule kept, what are the names of the relevant files, and is there a backup somewhere if the copy on your computer has become corrupted or if the computer itself is unavailable (e.g., destroyed in an office fire or earthquake or stolen)? Is the material on your computer encrypted and subject to two-factor authentication? What is the password to the two-factor authentication? Where will the two-factor authentication go? Your cell phone, an alternative email, both?

CLIENT RECORDS AND CONTACT INFORMATION

A useful professional will includes clear instructions about how to find and access client records and contact information. The ability to locate treatment records promptly may be critical because the sudden loss of a therapist may trigger a crisis for some clients. The executor (or someone appointed by the executor) may need to contact your clients quickly. Because some clients may not have told their family members that they are seeking care, the process of notification may be complicated. Make it clear in your professional will whether you have a place in your files indicating how clients prefer to be contacted. The professional will should also designate whether the executor or someone else will maintain the client records of the incapacitated or deceased therapist. This information can be announced via local newspapers, your voicemail or answering service, your website, a notice at your office, information filed with the state psychology licensing board and state psychological association, or all these methods.

AVENUES OF COMMUNICATION FOR CLIENTS AND COLLEAGUES

How do clients and colleagues contact you—answering machine, e-mail, other methods? Clearly describe each and how the person carrying out your professional will can access the messages. What codes are used to retrieve messages from your answering machine? Do you have a website for your practice? Do you have any social media accounts (e.g., Twitter, Facebook, Instagram, Clubhouse)? How can this be accessed? What are the names of any relevant e-mail accounts along with the user name, password, server address for receiving and sending mail, and so on?

NEW MESSAGES FOR YOUR ANSWERING MACHINE, EMAIL ACCOUNT, ETC

The prior step made sure the executor can retrieve messages from your answering machine, e-mail account, and so on. But what kinds of outgoing messages, if any, are appropriate for these different channels of communication? What recorded message should callers hear when they reach your answering machine? Should an auto-response be set up for your e-mail account? There are no easy answers to these questions, but you will likely know best what is most appropriate for your particular practice.

INFORMED CONSENT

Clients have a right to give or withhold informed consent for release of information. Documentation of consent for providing the executor with client contact information and access to client charts can be kept with the client charts and a note of it made in the professional will. One option is to include the name(s) of the executor in the original description of services that patients read and sign as part of informed consent. In other words, it would be helpful to include a statement indicating that you have designated a colleague as your professional executor in the case of death or disability to have access to the client's records, to provide psychological services if needed, or to refer to another qualified professional if needed.

CLIENT NOTIFICATION

Therapists may choose one or more methods to notify clients of a therapist's incapacitation or death, such as calling each client, placing a notice in the local newspaper, placing a message on the practice's website changing the outgoing message on the answering machine to include the announcement, changing the answering machine message to ask clients to call the clinician who is implementing the deceased therapist's professional will, and sending letters. It is worth spending some time considering the potential impact of each method and considering it in terms of the Golden Rule: Would any of us want to learn of our own therapist's or clinical supervisor's death by reading about it in the newspaper or hearing a recorded announcement on an answering machine? —and of how each of our current and former clients might respond.

Are there resources that clients might find helpful in these circumstances (e.g., designated colleagues who will make appointments available to your clients to help them deal with the immediate consequences and, if the clients choose, to locate subsequent therapists)? You will have a good sense of which approaches will work best for your individual practice and the relationship you have with your clients. Some long-term patients may require special consideration. Religious, cultural, and racial issues may be key for some patients.

The notification method must respect each client's right to privacy. Letters and phone messages that are not carefully handled can lead unintentionally to the disclosure to third parties that a person is seeing a therapist. Family members and others may not always respect the privacy of someone's mail and may, perhaps "accidentally," open and read mail that is not addressed to them. A telephone message left on an answering machine sometimes can be heard by those for whom it was not intended. In some cases, such unintentional disclosures can place a client at great risk. The abusive partner, for example, of a battered client may become enraged at finding out, through an intercepted letter or telephone message, that the client has sought help and may react violently, perhaps lethally.

COLLEAGUE NOTIFICATION

Who else in your professional life that would you like to be notified? What colleagues should be notified immediately? Are you a member of a group practice, or do you share a suite of offices? Are there clinicians who provide consultation or supervision to you on a regular basis or who receive those services from you? Do you co-lead a therapy group or family sessions with anyone? Are there conferences or workshops where you are regularly present? It can be helpful to check the listings in your scheduling book for a few months to make sure that you do not overlook any colleagues who should be listed (along with contact information) in your professional will for immediate notification.

PROFESSIONAL LIABILITY COVERAGE

Make sure your executor knows the name of the company providing professional liability coverage, contact information, the policy number, and instructions for the company to be notified immediately on the therapist's death or incapacitation. Include the username and password for remote access to your professional liability coverage.

ATTORNEY FOR PROFESSIONAL ISSUES

Many therapists consult an attorney for professional issues. You may have arranged for an attorney to review your office forms (e.g., informed consent, release of information) to ensure that they conform to state legislation and case law requirements. You may have discussed with your attorney your policies and procedures, format for keeping records, or particularly troublesome cases that raised puzzling legal questions. You may have sought legal consultation about how to respond to a subpoena or legal representation in a malpractice suit. Your executor is likely to find it helpful to know the name and contact information for any attorney you've consulted. The attorney you consult for professional issues may also help you in creating a professional will.

BILLING RECORDS, PROCEDURES, AND INSTRUCTIONS

Your executor will need to know where the billing records are, how to access them (e.g., if they are maintained by computer software), who prepares and processes the bills (e.g., a billing service, accountant, or office clerical worker),

and how pending charges are to be handled. Describing how any pending bills will be handled (e.g., office rent, utilities, website fees).

Some therapists may wish to forgive part or all of any remaining unpaid bills that were to be paid out of their clients' own pockets. Some may wish to provide a session—at the deceased therapist's expense—for each client, during which the clinician serving as executor of the professional will work with the client to discuss the situation, assess current needs, and explore options for future therapy. The professional will should include explicit instructions about any such wishes.

EXPENSES

How have you and your designated executor and back-up executors decided on the executor's compensation? Perhaps the easiest arrangement is at the executor's customary hourly rate, but other approaches can be used—for example, a flat fee, an honorarium payment, the executor declining any compensation for rendering this service to a friend, or a contribution to a charity chosen by the executor.

A professional will needs to include clear instructions about how all business-related expenses are to be paid.

YOUR PERSONAL WILL

Reviewing both your professional will and your personal will side by side to spot any inconsistencies can head off unintended problems and conflicts. If a personal will, for example, directs all assets to be disbursed in a certain way but makes no mention of funds to be used to pay the executor of your professional will, problems can arise. It is useful if each will make explicit reference to the other.

LEGAL REVIEW

A careful review of the professional will by an attorney skilled and experienced in mental health law can prevent numerous problems. The executor of the professional will can consult with the attorney about any legal questions arising in the days, weeks, and months after the therapist's death.

The attorney can advise on whether, in the light of state legislation and case law, the professional will is best authenticated simply by the signatures of disinterested witnesses, the seal of a notary, or other means.

COPIES OF THE PROFESSIONAL WILL

Give copies of your professional will to those designated as potential executors and to your attorney. Some therapists may consider making special arrangements to ensure the executor gains access to information such as their passwords for retrieving e-mail and answering machine messages only after their death. These arrangements avoid having confidential information in multiple copies of the will distributed to others.

REVIEW AND UPDATE

People, practices, situations, and times change. The passage of a year or two may turn a professional will that is perfectly suited to us when we draw it up into a storehouse of out-of-date instructions and misinformation. It is helpful to review a professional will on a regular basis—say, once a year—and make an immediate update whenever there is a significant change in our circumstances.