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This paper addresses events that most don't want to consider. If and when these events are considered, anxiety usually follows, as both the events and the act of planning for them are so daunting. The events?: unanticipated interruptions or terminations of practice due to death or disability. (There! We said it out loud.) So please take a few deep breaths, perhaps a warming cup of coffee or tea, and stay with us while we take up an increasingly important aspect of "good practice."

First issue: in the event of one's unanticipated termination of practice, who bears the responsibility for the preservation, maintenance, provision and ultimate destruction of a psychiatrist's records and business concerns, thus serving the interests of the psychiatrist and his/her patients?

Patients certainly have an interest in their records. Some might want them to support disability claims, to support litigation, for continuity of care, or for any number of reasons that our legislature views as important enough to grant liberal patient access. If patients find that their psychiatrist has unexpectedly terminated practice, they make inquiries as to how to obtain their records. Many may contact the California Medical Board. The Board's website offers the following information:

"How do I get my medical records if my doctor moves away/retires/dies?"

"...If the doctor died and did not transfer the practice to someone else, you might have to check your local Probate Court to see whether the doctor has an executor for his or her estate. You could then contact the executor to see if you can get a copy of the records. Depending on how much time has passed, whoever is appointed as the custodian of records can have the records destroyed."

In effect, the Medical Board is informing patients that a physician's executor, trustee or "personal representative" bears the responsibility for preserving, maintaining, providing and, after an appropriate period of time, destroying records.

Assuming that you have already done the type of estate planning that protects family members and other beneficiaries after one's death, is your personal representative aware of and competent to perform the duties and responsibilities required of him/her? Will your estate provide for funds that are needed immediately to manage the closing of practice? And if, rather than terminating practice due to unanticipated death, the actual cause is unanticipated disability, who will then take responsibility for these duties, with the appropriate training and knowledge?

Second issue: protecting psychiatrists' family members:

Sadly, we receive many calls from the spouses/partners of psychiatrists who are not themselves psychiatrists, but who find themselves in the terrible predicament of having an unexpected termination of their spouse's/partner's practice. They tell us that the office landlord is demanding rent payments and threatening to place office furniture in the streets and records in the trash, that calls are coming in from patients seeking records (and wishing to express condolences), etc. All of this is happening at times of grief and loss. Where their spouses/partners have not implemented a professional will, with designated executor(s) competent to manage the closing of the practice, the management of the records and the business details, they feel lost.

Third issue: protecting colleagues:

The colleagues of psychiatrists often find themselves thrust into situations in which they feel some responsibility and interest in assisting colleagues whose practices have been interrupted by unanticipated death or disability. Unless there has been a thorough preparation of a professional will, with instructions as to how to find records, keys to the office, computer passwords, financial records, etc., the helpful colleague also becomes overwhelmed and at a loss in the midst of grief and loss.

The Professional Will: a lot of work that can save a great deal of pain.

The mental health field in general has provided an arena for the development of a plan for the managed termination of practice in times of need. Among non-physician mental health professionals, all national professional societies have enacted ethical standards requiring advance planning for unanticipated terminations of practice. In some states, physicians are mandated by law to make such preparations. For example, Iowa physicians are subject to the following statute:

“2004.

- a.* A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.
- b.* A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for a period consistent with that established by Iowa Code section 614.9.
- c.* Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:
 - (1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.
 - (2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written request, the records will be sent to the physician or entity of the patient's choice.”

And in New York:

“The Rules of the Board of Regents on Unprofessional Conduct, §29.2(a)(3) require that professionals who retire from or sell a practice must make provision for records to be maintained and accessed, if requested. The obligation to maintain records is not changed by the retirement or sale of practice.

Further, professionals should also make provision for the maintenance and destruction of their patients' records in the event of the professional's death.”

While such legislation has not as yet been enacted in California, the considerations discussed above strongly support the view that it is good practice to create a professional will. If you are like most colleagues in California, and if anxiety and/or denial hasn't caused you to look for another article to read, please read on. This is a solvable problem.

We are aware of a number of resources available for those interested in putting together a professional will or contingency plan. Since non-physician mental health professional societies have enacted relevant ethical standards, there are some local non-physician professional associations which have standing committees on these matters. One such example is the San Diego Psychological Association, which has been assisting members through its “Psychologist Retirement, Incapacitation or Death” committee. This may be a valuable model for psychiatry's district branches. Other local associations may have similar resources, and this is yet another reminder to join your local district branch, as this service, by itself, is worth the cost of membership.

While local organizations can provide useful templates and how-to guides, psychiatrists don't necessarily have to go through these organizations to construct a valid professional will². You may choose to work with a colleague to achieve much the same result. Professional wills are essentially a list of instructions that answer the following questions:

1.) In the event you are unable to fulfill your professional responsibilities, either through incapacitation or death, who is the professional colleague you designate to assume responsibility for your practice? This should be someone you trust, who has agreed to undertake the responsibility, and who you feel comfortable discussing professional matters with your patients. Because your designee will need to make professional communications, they should be similarly licensed (i.e., not an attorney, accountant, etc.).

2.) What administrative tasks does your designee need to know to be able to wind down or pause your practice? Where are your keys? What are the passwords on your

computer(s)? Where do you keep patient information? How do you manage billing and what critical financial transactions must be completed (e.g., rent, communications with 3rd party payors, etc.)? For forensic practitioners, do you have retainer balances that should be returned? Do you have a password on your voicemail?

3.) How do you want your designee to communicate this information to your patients? Should the notifications be made in person, letter, and/or email? Remember that these notifications must be made sensitively.

4.) Are there colleagues you want your designee to contact? Who is your professional liability carrier and how should they be notified? How about any managed care panels on which you serve?

5.) Do you have an attorney for your practice? If so, and if your attorney does not already know about your incapacitation and/or death, he/she should be notified immediately.

6.) How is your designee to be paid? Have you set aside funds to help your designee with these time-consuming tasks? Consider purchasing a very small life insurance policy with your designee as the beneficiary and/or set aside some funds from your estate for this purpose, with instructions to your estate-planning attorney to make the funds available as soon as possible.

7.) If your designee cannot be found or is unavailable, who are your second and third backups? Do they know they have been named?

8.) What are the circumstances under which your professional will springs into effect? Death surely springs your professional will, but what about injury? How will your designee be notified that s/he is “on duty?”

Other things to remember:

A.) If you have any questions, your professional will should be reviewed by an attorney experienced in mental health law to ensure that your professional will does not conflict or expose your personal will.

B.) You should periodically review your professional will with your designee to make sure the information contained in it is current.

C.) Your professional will should be signed by you and your designee(s).

We hope that you’ve made it this far and that you actively consider the issues we’ve discussed, as do your patients, families and colleagues.