

San Diego Psychological Association

Guidelines for Preparing Your Professional Will*

Introduction

The incapacitation or death of a psychologist has profound ramifications for families, friends and clients. Legal, ethical, clinical, and personal issues are important for the practicing psychologist to consider. If there is advance warning of a psychologist's disability or death, it's possible to plan ahead for the benefit of clients so that there is as little trauma as possible.

In some cases, however, there will be no advance notice. The unexpected incapacitation or death of a psychologist can be the ultimate abandonment for our patients. Getting past our own denial and accepting that this is a real possibility for any of us means that we don't wait until we are of retirement age before we begin to plan. We are responsible to provide good care for our clients when we become unavailable for them. We do this when we go on vacations, and it is important to do this *ultimate* planning as well.

Incapacitation can be caused by a variety of circumstances and have varying degrees of severity and reversibility. Some types of incapacitation may involve cognitive and/or emotional impairment, e.g., Alzheimer's, significant cognitive decline, psychosis, substance abuse/dependency, etc. Under such circumstances, APA ethics indicate that psychologists should obtain professional consultation/help, and determine the degree to which they should limit, suspend or terminate their work-related activities.

The completion of a Professional Will ensures that important issues are covered: the name of your Professional Executor, access to a list of your clients and their records, access to your appointment book, cell phone, voicemail, and other electronic devices, and indications of the way you'd like your clients to be contacted. This allows for a smoother transition of care in a difficult time. A Professional Will helps maintain an ethical practice and a reasonable standard of care. Most importantly, completing a Professional Will communicates to your clients that you really do care about their welfare.

Guidelines

This is an example of one way to do it: This version of a Professional Will is only one of many possible ways of planning for what you want done in the event of your incapacitation or death. These guidelines are designed to assist you in the process of thinking through the nature of your professional practice and to suggest a number of possible options and issues for you to consider in providing instructions for your Professional Executor.

What a Professional Will is not: First of all it should be clearly understood that **this document, even though it is called a "will," is not a substitute for a Personal Last Will and Testament.** It is in fact a professional directive intended to give authority and instructions to a Professional Executor regarding a psychology practice in the event of the psychologist's incapacitation or death. The Professional Executor's role is to provide ethical and clinically appropriate disposition of the psychologist's practice, whereas the Personal Executor retains legal authority over the estate. **This is not intended as legal advice.** You may wish to consult with an attorney or an estate planner to see if this meets your needs and is consistent with other documents you may already have.

1. **Professional Executor:** Your choice of a Professional Executor is in many ways similar to choosing the person who will cover for you when you go on vacation. Your designation of a mental health professional you respect and trust may be the most important decision you make in creating your Professional Will since you are giving that person authority to take appropriate action on your behalf. Your wishes are most likely to be carried out effectively if you familiarize your Professional Executor with your practice and discuss mutual responsibilities, expectations and questions. Your estate executor and your Professional Executor should know how to reach each other quickly to coordinate on your behalf.
2. **Notification of Clients and Confidentiality:** An important concern in notifying a patient of a psychologist's disability or death is sensitivity to that patient's feelings and needs. The Professional Executor is, of course, aware of the painful nature of this announcement and of the patient's possible need for support. This could include a face-to-face meeting or an immediate referral to another therapist. Many patients may not have told their families or significant others that they are seeing a psychologist. An option for notifying patients without alerting their family members is to contact them through their cell phone rather than their home phone. Careful consideration should be given regarding how to use messages on voicemail, notices at the psychologist's office, on the website, and in the local newspaper. Examples are given in Addendum No. 1 "Guidelines for a Professional Executor."
3. **Client Records and Confidentiality:** Clients are likely to be concerned about what will become of their records upon the loss of their therapist. The Professional Will allows for a trusted colleague to safeguard those records until they can be forwarded to a new therapist or disposed of appropriately. According to the State of California Board of Psychology's Laws and Regulations Relation to the Practice of Psychology (2012), the records of an adult (18 years or older) should be maintained for seven years after the date of last contact and the records of a child or teen should be kept for seven years after the minor turns 18. For this reason, it's helpful to specify the date the client was first seen and the date of termination. A similar process should be followed with records of clinical consultations, clinical supervision, testing, and billing. Those psychologists who work in an institution (hospital, clinic,

agency, etc.) will be expected to adhere to their policies regarding the maintenance and transfer of client records.

4. **Informed Consent:** Your informed consent that clients sign at the beginning of treatment should inform clients that your Professional Executor would have access to their records in case of your incapacitation or death. APA Practice provides this sample of wording:

“In case I am suddenly unable to continue to provide professional services or to maintain client records due to incapacitation or death, I have designated a colleague who is a licensed psychologist as my professional executor. If I die or become incapacitated, my professional executor will be given access to all of my client records and may contact you directly to inform you of my death or incapacity; to provide access to your records; to provide psychological services, if needed; and/or to facilitate continued care with another qualified professional, if needed. If you have any questions or concerns about this professional executor arrangement, I will be glad to discuss them with you.”

For current clients, you can use the same paragraph printed out on a separate page for their signature. In addition, some psychologists have prepared letters addressing their clients in the event of their disability or death. The letter is a personal way of talking about the shared relationship. It's a more intimate way of saying goodbye and wishing them well. Some psychologists leave a list in their patients' files of professionals they might contact for treatment should the need arise. Whatever facilitates continuity of care and concern for the patient's well being is helpful in case of incapacitation or death.

5. **Location of Professional Will:** It's suggested that your Professional Will be filed with your malpractice insurance policy. You can also notify the San Diego Psychological Association to tell them that you have completed a Professional Will and give them the name of your Professional Executor. Should you have an attorney who has completed your personal will, it might be advisable to file your Professional Will with that individual as well.
6. **Collection of Fees:** The collection of client fees is not the responsibility of the Professional Executor but is part of the psychologist's personal estate and is managed by the family/personal executor.
7. **Reimbursement of the Professional Executor:** Your Professional Executor should be reimbursed for the time and expenses incurred in taking care of your professional practice. It's advisable to discuss the fee in advance. It's necessary to specify these financial arrangements in your personal will since that's how your Professional Executor will be reimbursed.

***DISCLAIMER**

The Guidelines for Preparing a Professional Will are for informational purposes only. The suggestions from the SDPA Committee on Psychologist Retirement, Incapacitation or Death are not equivalent to legal advice from an attorney. SDPA therefore makes no warranty regarding this sample Professional Will. Each individual psychologist should consult his/her

own attorney in order to draft the Professional Will appropriate to his/her professional situation.

PROFESSIONAL WILL*

I, _____, a resident of the County of San Diego, State of California, do hereby declare this to be my Professional Will. This supersedes all prior Professional Wills, in the event there are any. **This is not a substitute for a Personal Last Will and Testament.** It is intended to give authority and instructions to my Professional Executor regarding my psychology practice and records in the event of my incapacitation or death. Note that the Professional Executor's role is to provide ethical and clinically appropriate disposition of the psychologist's practice, whereas the personal executor retains legal authority over the estate.

FIRST

I am a licensed practicing psychologist. My California license # is _____

My principal office address is _____

SECOND

In the event of my death or incapacitation, I hereby appoint as my Professional Executor _____ who has agreed to serve in this role. His/her phone number, email and mail address are

In the event that _____ is unavailable or unable to perform this function, I hereby appoint as Secondary Professional Executor _____ whose phone number, email and mail address are

THIRD

I hereby grant my Professional Executors full authority to:

- a. Act on my behalf in making decisions about storing, releasing and/or disposing of my professional records consistent with relevant laws, regulations and other professional requirements.

- b. Carry out any activities deemed necessary to properly administer this Professional Will.
- c. Delegate and authorize other persons determined by them to assist and carry out any activities deemed necessary to properly administer this Professional Will.

The executor of my **personal will** is _____.
His/her phone number, email and mail address are

Complete this section if you have used an attorney to prepare your personal will.

The attorney for my **personal will** is _____.
His/her phone number, email and mail address are

FOURTH

1. First of all, I would like to express my deep appreciation for your willingness to serve as my Professional Executor.
2. I have filed several copies of this Professional Will as follows:
 - o One is in your possession.
 - o One is filed with my professional liability insurance policy.
 - o One is filed with my personal will (if I have one).
3. Please use your clinical judgment and discretion in deciding how you want to notify current and past clients of my death or incapacitation consistent with ethical and legal guidelines.
4. If clinically indicated, you may wish to offer a face-to-face meeting with some clients and discuss continuity of care. Additionally, after having contacted the client, you may wish to provide three referrals. (A more detailed description of options can be found in Addendum No. 1 "Guidelines for a Professional Executor.")
5. Please arrange for clients' records or copies of their records to go to their new psychologist or other mental health professional, if applicable, with the clients' consent. All remaining records should be maintained according to the relevant, most recent APA Ethics Standards, state regulations and APA Record Keeping Guidelines.

6. Please promptly notify my professional liability carrier of my death and arrange for any additional coverage that may be appropriate.
7. You may bill my estate for your time and any other expenses that you may incur in executing these instructions. Unless otherwise ordered by the court, the hourly rate of _____ is acknowledged to be reasonable. It is strongly recommended that you reinforce this commitment by also delineating its specifics in your personal will. If your practice is a corporation or LLC, you should consult with your attorney regarding whether your estate (instead of the corporation or LLC) should reimburse your Professional Executor.

Executed at _____, on _____

Signature _____

WITNESS

Printed

Name: _____ Signature: _____

Residing at: _____

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The San Diego Psychological Association version of the Professional Will (first published in 1999) was adopted by the American Psychological Association in 2014. The APA Practice Organization (APAPO) presented it to its members with emendations and updates in 2014. The APAPO documents and articles on this subject can be accessed at <http://www.apapracticecentral.org/business/management/index.aspx>

The documents in this packet reflect the SDPA Committee's current thinking as well as standards of practice within our community. September, 2014.

Files, Passwords and Contacts List for Professional Executor

This list is intended to be maintained and updated as needed and to include sufficient detail to facilitate access to all relevant professional documents including client contact information, client records and other relevant documents, including hard copy and electronic files as well as back-up files.

Attach a copy of this list, in a sealed envelope, to the copy of the Professional Will you give your Professional Executor(s).

- **Location of keys to office** _____

- **Individuals who may be able to assist** in locating/accessing my client records and other relevant professional documents
 - **Name** _____
Relationship (e.g., colleague, office staff, family member) _____
Address _____
Phone _____ Email _____

 - **Name** _____
Relationship (e.g., colleague, office staff, family member) _____
Address _____
Phone _____ Email _____

- **Appointment book/software and client contact information** (e.g., phone numbers, email addresses, information on how clients prefer to be contacted)
Location _____
Access
 - Keys (if any) _____
 - Passwords (if any) _____

- **Current client records**
Location _____
Access
 - Keys (if any) _____
 - Passwords (if any) _____

- **Past client records**
Location _____
Access
 - Keys (if any) _____
 - Passwords (if any) _____

- **Psychological test materials** (if applicable)

Location _____
Access
○ Keys (if any) _____
○ Passwords (if any) _____

- **Professional billing and financial records**

Location _____
Access
○ Keys (if any) _____
○ Passwords (if any) _____

- **Professional liability insurance policy**

Company and policy number _____
Company phone number/email _____
Location of policy _____
Access
○ Keys (if any) _____
○ Passwords (if any) _____

- **Computer and other electronic devices on which patient information is stored (including electronic backup if not listed above, e.g., external hard drive, cloud storage)**

Type of computer: _____ Location: _____
_____ Password: _____
Type of device: _____ Location: _____
_____ Password: _____

- **Professional practice telephone, e-mail, and website:**

○ Phone number: _____ Voicemail access code: _____
○ Email address: _____ Password: _____
○ Website address: _____
○ Password/How to access as an administrator: _____

- **Additional professional files, filing cabinets, and/or storage facilities (if any):**

○ Description, location, and how to access: _____

Signature _____ Date _____

Professional Will Packet Addendum No. 1

GUIDELINES FOR A PROFESSIONAL EXECUTOR

A Professional Executor serves an extremely important and potentially complex role. We have prepared these guidelines to help facilitate your work. They are merely guidelines, and all of them may not be applicable in all situations. It is quite likely, in fact, that some situations may arise that are not covered in these guidelines. Accordingly, in serving as a Professional Executor it is important to use your best clinical and professional judgment. Seek consultation from trusted colleagues as needed.

It is important to remember that as a Professional Executor you need not be alone in this task. While you as the Professional Executor are in charge, please recall that the Professional Will contains the following information, "I grant my Professional Executors full authority to:...Delegate and authorize other persons determined by them to assist and carry out any activities deemed necessary to properly administer this Professional Will."

Following are some guidelines you might wish to consult. They are organized by time periods, since immediate action is usually required surrounding a sudden death or incapacitation, followed by issues of resolution and closure.

Immediate (same day/next day)

(A) Welfare of Patients (primary concern)

1. Contact the family and/or executor of the incapacitated or deceased person's personal will and explain your role as a Professional Executor. Describe the assistance you may need and attempt to coordinate with them. Naturally, it is important to remember that family members will be affected by shock, grief, loss, etc., and to be clinically sensitive to these issues.
2. Review the guidelines and directives of the Professional Will, if there is one.
3. Gain access to the psychologist's appointment calendar, phone book, cell phone, and patient records.
4. Gain access to psychologist's office and post a notice with your phone number to call. A sample note on the door might read: *Dr. _____ is unavailable. For further information, please call me: (area code) (phone number). Thank you. (Your signature).* It is important that any communication regarding the psychologist be communicated directly and not in a voicemail message, taped to a door, or by e-mail. Such impersonality might appear brutal and unkind, and have a negative effect.
5. Gain access to voice mail and change greeting with your phone number to call. Sample greeting is similar to above. *Dr. _____ is unavailable. I am Dr. _____ and am taking calls for him/her. Please leave a*

message for me with your phone number and a good time for me to reach you and I will return your call as soon as possible. Thank you.

6. Call the same day/next day appointments to cancel. At that time, you will need to explain that the psychologist has died or become incapacitated and offer phone triage to the patient/s, scheduling appointments with you or making referrals to other psychologists, as appropriate.
7. Continue with cancellation of the week's, and current month's appointments.
8. In contacts with all patients offer further contact, consultation and, ultimately, referral to yourself or another psychologist, if desired or clinically indicated.

(B) Related Professional Practice Issues

Inform office staff, colleagues, and building management if the psychologist has died. Some documentation of the psychologist's death may be required.

Short-Term (second week and immediately beyond)

(A) Welfare of Patients

1. Form a liaison with family regarding their wishes for a memorial. Often a notice in the newspaper provides information to the larger community.
2. Contact all patients listed in the psychologist's appointment calendar for the past year to notify them.
3. Continue contact with current patients in order to facilitate addressing their needs (providing appointments, making referrals, etc.)
4. Clinical records should be placed in storage and records or copies of the records should be released upon appropriately documented request to another mental health provider. (This is strongly recommended in order to avoid any harm that might befall a patient upon reading random notes which cannot be processed because the writer is not there).
5. Do not read client files unless authorized by the patient.

(B) Related Professional/Practice Issues

1. Inform malpractice carrier as soon as feasible. It is necessary to do this in writing to ensure the addition of a tail to the insurance. Some documentation of death will probably be required.
2. Advise the family and/or the executor of the personal will regarding the disposition of the contents of the office.
3. Collection of bills is ultimately the personal executor's responsibility. Professional Executor acts in an advisory capacity regarding patients' privacy.
4. In California the law requires that a notice of the psychologist's death be published in a "hometown newspaper" or newspaper of widest circulation in the county for two weeks at five days a week

Intermediate-Term (first few months)

(A) Welfare of Patients

1. Keep phone and voice mail active for at least a year, update greeting as appropriate, check weekly and respond as needed.
2. Continue to facilitate referrals and the appropriately documented requests for transfer of records.
3. Arrange for longer term confidential storage and disposition of records.

(B) Related Professional/Practice Issues

1. Inform the California this is the Board of Psychology with a copy of my obituary or death certificate.
2. Inform APA, CPA, SDPA and any other professional organizations
3. Cancel journals.

Long-Term

(A) Welfare of Patients

Continue to attend to patient requests as they arise.

Professional Will Packet Addendum No. 2

Relevant Citations: APA Record Keeping Guidelines (2007)

a) "... The Ethics Code (6.01) sets forth reasons why psychologists create and maintain records. Based on various provisions in the Ethics Code, in decision-making about content of records, a psychologist may determine what is necessary in order to (a) provide good care; (b) assist collaborating professionals in delivery of care; (c) ensure continuity of professional services in case of the psychologist's injury, disability or death..." (p.5)

b) "...The usefulness of psychological service records often depends on the record being systematically updated and logically organized. Organization of client records in a manner that allows for thoroughness and accuracy of records, as well as efficient retrieval, both benefits the client and permits the psychologist to monitor ongoing care and interventions. In the case of the death or disability of the psychologist or of an unexpected transfer of the client's care to another professional, current, accurate, and organized records allow for continuity of care (see Guideline 13)." (p. 8)

c) "... In the absence of a superseding requirement, psychologists may consider retaining full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is later. In some circumstances, the psychologist may wish to keep records for a longer period, weighing the risks associated with obsolete or outdated information, or privacy loss, versus potential benefits associated with preserving the records (see Guideline 8)." (p. 10)

d) "... Disposition of Records. The psychologist plans for transfer of records to ensure continuity of treatment and appropriate access to records when the psychologist is no longer in direct control and, in planning for record disposal, the psychologist endeavors to employ methods that preserve confidentiality and prevent recovery." (p. 15)

e) "... The psychologist has two responsibilities in relation to the transfer and disposal of records. In anticipation of unexpected events, such as disability, death or involuntary withdrawal from practice, the psychologist may wish to develop a disposition plan in which provisions are made for the control and management of the records by a trained individual or agency. In other circumstances, when the psychologist plans in advance to leave employment,

close a practice, or retire, similar arrangements may be made or the psychologist may wish to retain custody and control of client records.” (p. 15)

f) “In some circumstances, the psychologist may consider a method for notifying clients about changes in the custody of their records. This may be especially important for those clients whose cases are open or who have recently terminated services. The psychologist may consider including in the disposition plan, in accordance with legal and regulatory requirements, a provision for providing public notice about changes in the custody of the records, such as placing a notice in the local newspaper.” (p. 15)