

Guidelines for Closing a Psychology Practice



ASPPB

Association of State and
Provincial Psychology Boards

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Introduction

Inevitably, a psychologist will, at some point, have to contemplate closing down their practice. In doing so, the psychologist may confront a number of legal, ethical, emotional, and personal challenges, quite different from those that were required to open their practice (Thomas, 2015). There are many reasons why a practitioner may need to close their practice including a planned retirement, sudden incapacitation, gradual cognitive decline, disciplinary action, or death (Thomas, 2015; Good Practice, 2014/2015). These circumstances raise unique ethical and legal challenges. Both the American Psychological Association (APA) and Canadian Psychological Association (CPA) have identified a number of the ethical issues related to this (APA, 2017; CPA 2017). Several jurisdictions offer guidance to licensees/registrants to assist with the task of closing down a practice. Drawing on the wealth of experience of these jurisdictions, and the extant literature, these guidelines have been developed to outline the issues that a practitioner may confront in addressing this career milestone, and to offer suggestions on processes to be followed.

For the first time in its history, Canada has more senior citizens than youth under the age of 15 (Statistics Canada, 2016). In addition, data from the APA Center for Workforce Studies (2013) indicated that the majority of Psychologists in the United States were aged 61 to 65. Professions in Canada and the USA are experiencing a “greying” of their licensees, and this makes the need for clear guidelines for closing a professional practice imperative. Some professions already have guidelines to address this issue. The American Psychiatric Association (2006) published a document on the necessary steps to close a professional practice that addresses business, regulatory, ethical, and personal issues. Similarly, the National Association of Social Workers Center for Workforce Studies (2012) published a document entitled “Retiring? Tips for closing your private practice”.

In this document, step-by-step guidance is offered to practitioners that address a variety of issues including professional wills, malpractice insurance, transfer and closing of documentation, as well as a checklist to guide the process. Other professions have followed suit, including psychology, and offered various guidelines to the practitioner (Good Practice, 2014/2015; The National Psychologist, 2015). In fact, psychology identified this issue quite some time ago (Koocher, 2003), however absent from the discussion in psychology has been guidance from the regulatory community whose ultimate responsibility is the enforcement of the standards, rules, and statutes that govern activities in this area. It is hoped that this document will fill this void.

This guiding document was prepared in response to discussions that occurred within the ASPPB Board Administrators and Registrars Committee (BARC) regarding the desirability of having consistency, across jurisdictions, in terms of the guidance provided to practitioners about closing a practice. The aging demographics of the psychology profession coupled with the growing numbers of practitioners who are

entering private practice have created challenges for regulatory boards and practitioners alike. It has been noted anecdotally that, in the absence of clear guidance about how to manage records at the close of a practice, unfortunate instances of abandoned records emerge, further highlighting the need for these guidelines.

To consider these issues, the Professional Termination Task Force was formed in April 2018. Members of the task force include: Dr. Alan Slusky, Chair (Registrar of the Psychological Association of Manitoba and ASPPB Board of Directors Member at Large), Dr. Jamie Hopkins (Kentucky Board of Examiners in Psychology), Ms. Karen Messer Engel (Registrar and Executive Director, Saskatchewan College of Psychologists), and Mr. Darrel Spinks (Executive Director of the Texas Board of Examiners in Psychology). The task force's efforts were supported by Ms. Janet Orwig (ASPPB Associate Executive Director Member Services).

It was the goal of this Task Force to develop a document that will aid practitioners in wisely and proactively addressing what will be a need for all at some point in their professional careers. In so doing it is also the task force's hope to mitigate the potential for "abandoned records" and other issues of concern, and the obvious negative impact that this has on client/patient populations.

The intent of this document is to highlight the relevant issues associated with both the planned and sudden closing of a psychology practice, placing an emphasis on providing practical guidelines to licensees. In addition, the Task Force hopes this document will assist regulators in their work and will reduce the need for their intervention. It is important for regulators to keep in mind to allow time for compliance before initiating these guidelines.

The document reviews the current literature on the processes and requirements of closing of practice, highlights ethical issues where appropriate, as promulgated by the ethical codes of both the APA and CPA, and provide sample forms for practitioner use. In accomplishing the above, the Task Force hopes that this document which fulfill its mandate which was:

1. Survey the ASPPB membership in regard to issues, common needs, and concerns relating to the closing down of a psychology practice;
2. Consider the literature on this topic and through this research identify issues which must be considered in developing guidelines and regulatory language;
3. Consider APA and CPA Codes of Ethics, practice guidelines, and practice guidelines developed by other health professions and regulators;
4. Create guidelines for jurisdictions in regard to closing the psychology practice in a variety of circumstances; and;
5. Recommend consideration of specific regulatory language.

Definitions

Access to Information – is the ability for an individual to seek, receive and impart information effectively. A client's right to access their own health information is protected under privacy legislation in both Canada and the USA.

Incapacity – the state of not being able to do something such as a job, usually because of an illness or injury.

Indemnification – security against legal liability for one’s actions.

Immunity (legal) – a legal status wherein an individual or entity cannot be held liable for a violation of the law, in order to facilitate societal aims that outweigh the value of the imposing liability on such cases.

Impairment – diminishment or loss of function or ability.

Professional Executor: refers to the person selected to carry out the terms of a professional will, a transition plan, or another comprehensive plan intended to address the cessation, whether temporary or permanent, of professional practice by a licensee.

Professional Practice: refers to the activities or services directly related to the delivery of psychology services to clients/patients, including typical business functions or operations such as payroll, taxes, accounts payable or receivable, and building or office maintenance.

Personal Will: A legal document intended to address the final wishes of the individual regarding their personal property and the maintenance of any dependents.

Professional Will: A legal document intended to outline the provisions made, and the process to be undertaken, to close the practice of a professional (a psychologist for the purposes of this document) if they are unable to do this for themselves.

Secure Storage – manual and automated computing processes and technologies used to ensure stored data security and integrity.

Reasons for Termination

The termination or closure of a psychologist’s practice may happen for a variety of reasons. Sometimes this change is looked forward to and carefully planned and may be eased into, as in the case of a retirement, or it may be entirely unplanned as in the case of death or sudden impairment. Closure may also happen permanently, or temporarily, as may be the case with temporary disability, impairment, or discipline. Regardless, having a plan and policy in place before such an event occurs can ease the transition for everyone involved, from psychologists, to their clients/patients, to collateral staff, and colleagues. Preparation is key and should be considered as part of the training of new psychologists, to the opening of a practice, and to the initiation of services with new clients/patients.

Planned termination of a practice may be accomplished gradually as one moves toward retirement. Psychologists may reduce their client/patient loads over time and stop taking on new clients/patients. They may also begin referring clients/patients to other providers in the area but remain available to assist in the transition process. Psychologists planning to relocate may follow some of the same procedures as those moving toward retirement. When providers are planning to relocate to another community, they may refer all of their clients/patients to another provider or service (selling a practice), or simply offer referrals in the area to their clients/patients one by one.

If a psychologist knows that they will be temporarily withdrawing from practice due to a health condition, a temporary disability, or as part of disciplinary sanctions this should be made clear to clients/patients as soon as is practical, and no later than the outset of the absence. When a provider is forced to cease their practice for disciplinary reasons, there may be legal requirements around

disclosure of the reasons, and/or edicts not to disclose. Ideally, how notice is to be provided should be made clear in the disciplinary process. When a psychologist expects to return to practice, clients/patients should be informed and provided with information regarding the procedures for re-initiating psychological services.

In the case of incapacity and impairment, a provider's ability to recognize and acknowledge that the practice is being negatively impacted may be compromised. The potential for this to occur underscores the importance of advanced preparation. Impairment may have a gradual onset that is difficult to spot (as with some substance use disorders, or gradual cognitive decline), or maybe be sudden (as with a stroke or other significant health condition). Such impairments may be permanent or temporary - when permanent they may be thought of as an incapacity to practice psychology.

Often more distressing is the unplanned termination of a practice, especially if it is the result of a death. In addition to unexpected death, there are other reasons for the abrupt, unplanned termination of practice including sudden disability, incapacity or impairment of the psychologist or within the psychologist's family. These issues may be present for the psychologist or with a loved one, leading to the emergent need to close a practice. Finally, larger environmental and/or sociopolitical issues may emerge that require the closure of a practice, including natural and man-made disasters such as hurricanes, storms, and war. Unplanned termination of practice need not equate to an unprepared cessation of practice.

Ethical Considerations in Closing a Practice

Psychologists have a contract with society that requires that they act in the best interests of those served, be ethical in their actions and decision making, and adhere to prevailing legislation and the standards of the profession. Planning for the closure of a practice is a component of this contract and is paramount and supported by the CPA "Canadian Code of Ethics for Psychologists 4th Edition" (CPA Code) and the APA "Ethical Principles of Psychologists and Code of Conduct" (APA Code).

Both the CPA and APA Codes speak to the profession's responsibilities to do no harm and when within one's control, to mitigate any potential risk to clients/patients. Not planning for the closure of a psychologist's practice whether it occurs as a result of retirement, relocation, incapacity, termination by an employer, or death creates immediate problems for the continuity of service to clients/patients, management of client health records, and the handling of administrative responsibilities. Most importantly, the failure to plan for the closure potentially may result in a negative impact on the wellbeing of clients/patients

Identifying a Professional Executor

The psychologist's ethical responsibility for planning for the close of their own practice begins with the identification of a professional executor. This individual is in essence given the "keys to the house" and has agreed to take on the responsibility of managing the business affairs of the psychologist and to close their "house" (practice) should they not be available to do this themselves. Identification of such an individual is congruent with a psychologist's ethical responsibilities to not abandon clients/patients, to facilitate continuing care when necessary, to ensure the confidentiality of client health records, and to ensure client access to their own personal health information (PHI). The APA Code requires that:

3.12 Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations.

10.9 When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient.

Similarly, the CPA Code contains the following directives:

II.33 Give reasonable assistance to secure needed psychological services or activities, if personally unable to meet requests for needed psychological services or activities.

II.36 Give reasonable notice and be reasonably assured that discontinuation will cause no foreseeable material harm to the primary client, before discontinuing services.

II.37 Establish suitable procedures for responding to emergencies, including procedures for situations in which they are unavailable due to illness, absence, death, or technology failure.

In addressing the psychologist's ethical responsibility for planning for the closure of their practice, the Task Force suggests including the articulation of that plan to the client during the initial contact when informed consent is being sought. Sections 3.10 and 4.02 of the APA Code and section I.23 of the CPA Code identify the responsibility to seek informed consent from those legally entitled to provide it, and, as part of that process, to discuss confidentiality and its limits. Sections I.44 and I.45 of the CPA Code speak to the responsibility to identify "what measures will be taken to protect privacy and confidentiality..." and that a psychologist should "share confidential information with others only to the extent reasonably needed for the purpose of sharing, and only with the informed consent of those involved,..." In addition, the conventional standard in health service environments when seeking informed consent is to also address the issues of the collection, storage, access, and disclosure of PHI. This standard would be supported by privacy legislation such as the Health Insurance Portability and Accountability Act (HIPAA, 1996) in the USA, or in Canada, in provincial legislation governing the collection, access, storage and disclosure of PHI.

Record creation and maintenance are important to the issue of planning for the close of a psychologist's practice. The Codes of Ethics and the privacy legislation in Canada and the USA and individual state or provincial codes of ethics as well as the standards of the profession, identify a psychologist's responsibility for the creation and maintenance of complete records regarding the work they undertake (i.e. client records, supervision records, billing records), and in particular, client health records. This imperative is in part to ensure that continuity of care can occur, and to the extent possible risk for clients/patients is mitigated when practices are closed or practitioners change. Section 6.01 of the APA Code and section II.21 of the CPA Code speak to this responsibility and state the following respectively:

6.01 ... Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional

requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.)

11.21 Create and maintain records relating to their activities that are sufficient to support continuity and coordination over time and to manage risks.

Imperative in the planning for the close of a psychologist's practice is consideration of how to ensure that, to the greatest extent possible, all client health records are complete and up to date, congruent with the ethical directive of non-maleficence. Other records of importance also worthy of consideration in terms of whether they are complete and current are those that pertain to the financial status of the practice (e.g. billing information, outstanding debt, bank accounts), lease information, insurance information, partnership agreements, technology utilized, external storage of client records, passwords, contact information etc. Examples of how to identify and provide this information to professional executors is provided in the appendices.

In addition to the responsibility to create complete records, is the responsibility to securely store, manage and maintain client health records ensuring confidentiality as well as appropriate access. Consideration of legislative imperatives, professional standards, and regulatory standards regarding record storage and retention need to be considered in planning for practice closure. Included in the issue of record storage, management and maintenance is the responsibility to ensure that the professional executor understands the ongoing ethical and legal responsibilities in relation to client health records. Congruent with privacy legislation in both countries, the APA and CPA Codes direct that client information and their health records must be securely stored and maintained. The APA Code states:

4.01 ... Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship.

6.02 ... (a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium.

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice.

The CPA Code states that the Psychologist must:

1.41 Collect, record, store, handle, and transfer all private information, whether written or unwritten (e.g., paper or electronic records, e-mail or fax communications, computer files,

recordings), in a way that attends to the needs for privacy, confidentiality, and security. This would include protection from loss or unauthorized access, appropriate education of staff or other agents, and having adequate plans in circumstances of one's own serious illness, termination of employment, or death

When the closure of practice is anticipated due to situations such as relocation or retirement, and the professional relationship is necessarily being terminated by the psychologist, there is an ethical responsibility to discuss this directly with the clients/patients. The psychologist has a responsibility to discuss the close of a practice and the ending of the therapeutic relationship with clients/patients prior to its occurrence and to assist them in accessing other service providers should this be desired. The professional executor would not have a role in such cases, as it would be important for the psychologist to be directly involved in making arrangements for active clients/patients should this be desired, and for the ongoing storage, management and maintenance of client health records. Regarding this responsibility the APA Code states:

0.10 ... (c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pre-termination counseling and suggest alternative service providers as appropriate.

Congruently, the CPA Code states that Psychologists in terminating services must:

II.33 Give reasonable assistance to secure needed psychological services or activities, if personally unable to meet requests for needed psychological services or activities.

II.36 Give reasonable notice and be reasonably assured that discontinuation will cause no foreseeable material harm to the primary client, before discontinuing services.

Professional Will and Other Necessary Documentation

Why should a psychologist have a professional will?

Psychologists have a professional and ethical responsibility to ensure that their actions are in the best interests of those served and do not intentionally or unintentionally cause them harm. A professional will is a way to put in place protections for clients/patients to ensure that there is continuity of care should this be desired, and ensure that client personal health records are secured, maintained and appropriately accessed. In addition, a professional will minimizes the risk to the psychologist's personal estate and reduces the burden on colleagues and family members to manage the professional affairs of the psychologist when they are unable to do so themselves.

What is the difference between a professional will and a personal will?

A professional will is intended to address the closure of the practice of a professional (here a psychologist) to ensure that it will be closed appropriately, when this is required, and they are unable to do so themselves. A professional will ensures that client wellbeing is addressed. A personal will is

intended to address the final wishes of the individual regarding their personal property and the maintenance of any dependents.

What are the necessary components of a professional will?

1) Authorities Statement

There must be a clear statement providing the professional executor with the necessary authority to access the psychologist's practice and to take possession of all practice records, including client health records. The authority must also allow for the professional executor to make decisions regarding the closure of the practice and to allow for the administration of the will.

2) Identification of a Professional Executor

The professional will must identify the professional executor and provide their current contact information. In choosing a professional executor, psychologists should choose an individual that is trusted, someone who they are confident fully understands and appreciates the responsibility being agreed to, including an understanding of prevailing legislation and the standards of the profession as related to client care and client health records. Ideally this individual should be a member of the profession or if this is not possible a member of another regulated health profession. The professional executor ideally should not be a member of the psychologist's own family due to the inherent conflict of interest that exists. More information regarding requirements for the professional executor is further explained later in this document.

3) Responsibilities of the Professional Executor

- Upon notification of the need to close a colleague's practice, immediately secure client health records congruent with prevailing privacy legislation and the jurisdictional regulatory requirements of the profession.
- Identify and catalogue all active clients/patients (i.e. open health records, and/or active as defined by the jurisdictional regulator) and all non-active/closed client cases.
- Arrange for the secure retention of all client health records according to the record retention/maintenance/destruction requirements outlined in prevailing legislation or, if this is not clearly addressed in legislation, according to the regulatory standard of the jurisdiction. Where both a legislative and regulatory standard for record retention and destruction exist, the higher standard should be followed.
- Determine any outstanding issues that may need to be addressed in regard to active clients/patients (e.g. provide information to another health provider, provide documentation for insurance, provide a report to facilitate a client's access to programs and services etc.).
- Provide all active clients/patients with individual written notification of the close of the practice that includes:
 - notice of who has responsibility for their health record;
 - contact information for the professional executor;

- notice of where their health record is stored and how it can be accessed; and,
 - an offer to send the record to another health provider or assist in finding another provider, and the date by which if no request has been received to transfer it, the record will be put into long term storage.
- Facilitating ongoing services for a colleague's clients/patients may involve:
 - Making a referral to another resource or service provider or psychologist;
 - Referring a client back to the primary care physician for referral to another psychologist;
 - Providing clients/patients who request it with a list of publicly funded services and a list of private "fee-for-service" providers;
 - Providing another health provider of the client's choice with a copy of the health record; and,
 - Integrating the client into the professional executor's own practice should that be an option and agreed to by the client.

- Arrange for a general notice of the close of practice to appear in the local paper in the communities in which the colleague practiced identifying who has control of the records and how the records can be assessed.
- If a website, email system, voice mail system, and/or answering service was used for the practice, provide notice of closure on these systems and maintain the systems for a reasonable period of time before shutting them down.
- Maintain an accurate record of all client health record transfers and destructions, including what was requested and what was transferred.
- Address any administrative issues pertaining to the close of the practice e.g. cancellation of leases, closing of the financial accounts, payment of outstanding debts from the business account.

4) Lists of Locations/Passwords/Contacts

A professional will should clearly identify information that will be essential in closing the practice, including but not limited to, the location of all records (client, financial, insurance etc.); contact information for clients/patients and professional contacts; passwords for all accounts, records and technology; the location of any keys; the location of test materials, appointment book, electronic devices, etc.

5) Specific Instructions for the Professional Executor

A professional will should also include any specific instructions for the professional executor. These might include and explanation of how costs incurred in the course of the administration of the will shall be covered, an honorarium for the professional executor's time and work, and who, in addition to active clients/patients, should be notified of the closure, etc.

6) Responsibilities in Establishing A Professional Will

- legal consultation;
- consideration of relevant legislation e.g. privacy, incorporation etc.;

- identification of a professional executor and ensuring that the professional executor understands and agrees to the role;
- establish and maintain full and current client health records;
- establish and maintain full and current practice records (e.g. financial, billing, insurance records, contact information, partnership records);
- maintain adequate liability insurance;
- ensure that financial resources are available to allow for record retention and management, addressing any liability claims against the practice, and the administrative costs for the close of the practice;
- provide the professional executor with passwords, keys, information about location of records, accounts etc. – anything that may be required to close the practice;
- provide a copy of the professional will to their professional executor;
- ensure that a copy of the professional will is filed with the personal will; and
- ensure that family members have been apprised of the plans regarding the closure of the practice.

General Requirements for Professional Executors

Why the need for a Profession Executor?

Psychologists have an obligation to their clients/patients to have an organized plan to ensure that any cessation of professional practice, whether temporary or permanent, does not harm or impose an undue hardship on them. As stated in the section above an organized, comprehensive plan includes the selection of a professional executor who will be responsible to respond to requests for records or information; to maintain the confidentiality of mental health records and dispose of same in an appropriate manner where necessary; to facilitate or assist with the transition of clients/patients to other providers; to assist with billing for services rendered, if requested; to direct or assist the closing of the practice; and to respond effectively to any other unforeseen issues arising out of the cessation of professional practice.

Selection of Professional Executor

A professional executor must be an individual whom the licensee believes can carry out their duties in a competent and efficient manner without feeling overwhelmed. Given the importance of the tasks to be assigned, a professional executor should ideally be a psychologist, but may also be a staff person from the practice, other colleague, a lawyer, or business associate. Ideally the professional executor should not be a relative given the potential for concerns regarding conflict of interest and bias.

When selecting a professional executor, a psychologist should consider factors such as professional and business acumen; familiarity with the psychologist's practice; similarities between the parties' practices; age differences between the parties; number of clients/patients involved; the psychologist's client population; and physical distance between the parties' practices. A psychologist should also take into account the disciplinary history, if any, of the individual(s) being considered.

When deciding whether to serve as a professional executor, a person should consider all of the above factors as well as the level of preparation shown by the other party. A psychologist should also consider

the amount of time available to carry out the duties of a professional executor; any financial burden associated with serving as the professional executor; and the amount of funds set aside or available to cover expenses (e.g. third-party document storage/management).

While a professional executor may serve as the guardian, attorney-in-fact, or personal representative of an estate, serving in one of these capacities is not a prerequisite to serving as a professional executor.

Agreement with Professional Executor

To ensure that the ethical duties of the profession are fulfilled following death or incapacity, a psychologist may enter into a legal agreement with a professional executor. This agreement should outline the responsibilities as described in the psychologist's professional will and should reflect the professional executor's understanding of the commitment necessary to carry these out. The agreement should also indicate any compensation to be paid to the professional executor, as well as any funds set aside or available to cover expenses incurred by the professional executor (e.g. third-party document storage/management).

The agreement should contain language providing indemnification for the professional executor against any claims or causes of action brought by third parties arising out of their performance under the agreement.

Lastly, the agreement should make clear that the professional executor may not act in direct contravention to lawful directives of the psychologist, or in the event of the psychologist's death, or incapacity, the psychologist's guardian, attorney-in-fact, or personal representative of the estate.

Notice to Clients/Patients of Professional Executor

As stated previously, it is important that a psychologist, as part of the informed consent process, seek client understanding and agreement to the access and control of the client's records by the professional executor in the event of the psychologist's death or incapacity. This language should make reasonably clear that the professional executor is tasked with assuming responsibility for access and confidentiality of the client's mental health records. The notice may, but need not, identify the professional executor. The client can be informed that they would be contacted by the professional executor should the need arise.

Ethical Considerations

In lieu of providing initial referrals to other providers, a professional executor may offer to provide their services to clients/patients so long as doing so would not constitute a conflict or dual relationship under other applicable statute, the relevant Codes of Ethics, and relevant jurisdictional practice standards. In the event of a conflict or dual relationship, or if requested, the professional executor shall provide the client with assistance in accessing an appropriate provider.

Sample Regulatory Language

A licensee shall affirm that they have prepared a professional will, transition plan, or other comprehensive plan intended to address the cessation of professional practice when renewing their license. Licensees shall also identify the professional executor selected to carry out the plan and provide that individual's contact information.

At license renewal psychologists shall list those colleagues for whom they have agreed to serve as a professional executor.

Other Important Points for Consideration

A review of both American and Canadian jurisdictional statutes and regulations on the issues of record retention, record disposal, and (for those jurisdictions with more current regulatory language) statements speaking to professional wills and executors, reveals that language is lacking requiring that licensees adhere to these regulations. As the essence of a self-regulating profession is public protection through oversight, it is important to ensure compliance with these guidelines.

In many jurisdictions, regulators have the legislative authority to conduct practice audits, particularly in cases of disciplinary action. These audits are often time-limited and may be restricted to clients/patients and/or issues relevant to the disciplinary matter under consideration. Still other jurisdictions provide for random audits of their licensees' practices, to ensure general adherence to a variety of regulatory requirements such as record-keeping, informed consent, clarity of notetaking, and confidentiality. Nowhere, however, could the Task Force find statements that speak specifically to compliance audits for the establishment of professional wills or for the appointment of executors. While this may reflect on how audits are traditionally conceptualized (i.e. to step in after the fact and determine if improper practice is occurring), the Task Force would argue that an additional and vital role for practice audits should be to ensure that the necessary steps have been taken by practitioners to prepare for the inevitable.

The importance of practice audits is underscored by the variety of provisions within jurisdictional legislation that address the issue of abandoned records. While many jurisdictions have specific clauses in their statutes or regulations, that speak to how client/patient records must be retained, little guidance is given about when a professional executor must assume custody of client/patient records. A notable exception however exists in Manitoba, where the provincial government has stated that if a healthcare practitioner abandons their client/patient records, the college (regulator) automatically becomes custodian of the records unless a specific professional executor has been appointed. The implications for the regulator here are clear, and in smaller jurisdictions, could prove to be financially perilous for that regulator. For that reason, the Task Force recommends consideration of regulatory language that permits the auditing of a licensee's practice to ensure compliance with the appointment of an individual who will take on the responsibilities noted above. (i.e., a professional executor).

Sample regulatory language to address the issue of practice audits:

Notwithstanding any other provisions for practice audits contained in the statute, regulations, or rules governing the practice of Psychology in (insert jurisdiction here), the regulator reserves the right to undertake random practice audits of its licensees/registrants, to ensure that a professional executor has been appointed and that sufficient information has been provided to that executor (e.g., a professional will) to ensure the safe and ethical storage, transfer, and/or disposal of patient/client records in the event of the closure of that licensee's/registrator's professional practice.

Group and/or Multidisciplinary Practices

An additional issue for consideration when planning the closing of a practice is whether the practice is part of a broader group practice, solo in nature, or embedded within an institution (e.g., a hospital or community clinic). The answer to this question will have a significant impact on the steps a practitioner must take in order to ensure that their practice is closed appropriately, and records are maintained.

The majority of the recommendations in this document speak to the solo practitioner, or the practitioner who works in a group practice but who has taken sole responsibility for their client/patient records. But what of the emerging phenomena of interprofessional collaboration/practices, where professionals from multiple disciplines team to provide integrated and holistic client/patient care? In such cases there may be conflicting regulatory and ethical requirements for these issues, depending upon the profession in question. The issue may then become one of whose profession takes precedence (i.e. the practitioner who has left practice or the one left responsible for the records)? This is a challenging issue and speaks clearly to the importance of both seeking competent legal advice in the initial stages of establishing such a multidisciplinary group practice, as well planning for the eventuality of a practice closure. Similar issues have been discussed in the literature (e.g. differing professional malpractice insurance requirements in the context of multidisciplinary clinics), however little attention has been paid to the differences across professions in addressing practice termination and record retention. Moreover, what of the psychologist who operates a private practice within the context of an institution (e.g. community clinic or hospital). Psychologists must adhere to the statutes and regulations of the profession and the psychology regulatory board, however what if those statutes and regulations conflict with clinic/hospital policies around issues of record retention, access to records, and transfer of client/patient care? In such cases, adherence to the higher standard is recommended and that a request to adhere to that standard be embedded in the practitioner's professional will.

In many cases there are no clear answers to these points for consideration. Consultation with legal counsel can provide guidance, and licensees are strongly encouraged to consult with colleagues to ensure that their practice is consistent with others. In this area however, where awareness of the inherent need appears to still be somewhat in its infancy, inter-practitioner variability is likely to be high. In such cases, the Task Force recommends consideration of the following:

1. In cases of multidisciplinary group practice, licensees should ensure that their practice termination preparation meets with any local psychology regulatory standards or guidelines.
2. In cases where a psychologist's obligations under the jurisdiction's rules or statutes conflict with those of other practitioners (who may eventually become responsible for that psychologists records), it is recommended that the psychologist's professional will acknowledges these discrepancies, speaks to steps taken to reconcile the differences (if any), and where appropriate, provide guidance to clients/patients who may consequently struggle to access their records under divergent regulatory requirements.
3. If legal consultation has at any time been obtained to guide the psychologist in addressing these conflicting requirements, practitioners are urged to retain copies of that guidance, along with the contact information of the lawyers who offered it, so as to protect (as much as possible) those who may need to act on this advice.
4. For the case of a private practice embedded within an institution (e.g. hospital), it is recommended that the psychologist ensure their record-keeping practices adhere to regulatory standards and if for any reason, diverge from those outlined in the hospital policies,

documentation exist to highlight the discrepancy and the reasons for whatever course of action is taken. Psychologists prior to the creation of the professional will have the responsibility to identify for the employer and client where there is a discrepancy between the profession and the institution. Hospitals will frequently have legal counsel available to provide advice in circumstances where a practitioner's regulatory authority and hospital policies diverge.

5. If uncertainty persists, the best suggestion is to work to the higher standard of care.

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Appendix I: Sample Professional Will

A number of ASPPB member jurisdictions have generously shared their current templates for professional wills. The following represents two examples (Manitoba and Pennsylvania) of the many submitted.

SAMPLE PROFESSIONAL WILL #1 (MB)

I, [enter your name here], a resident of [enter name of city here], Province/State of [enter jurisdiction here], being of sound mind and memory, 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 in the event of my incapacitation or death.

1. Registrant/Licensee Name

I am a [registered/licensed psychologist], in [enter jurisdiction(s) here] Registration #(s) _ _ _ . My office address is:

[enter office address here]

I also maintain a [second, home, alternate] office at:

[enter additional office addresses here]

2. Appointment of Professional Executor

In the event of my death or incapacitation, I hereby appoint [enter name of registrant], Registration # _ _ _ _ (or identifying information of other qualified individual), whose phone number is:

[enter phone number here]

and whose office is located at:

[enter office address here]

as my Professional Executor.

In the event that [enter name of above registrant here] is unavailable or unable to perform this function, or requires assistance, I hereby appoint [enter name of alternate professional executor] Registration # _ _ _ _ , (or identifying information of other qualified individual), whose phone number is: [enter phone number here] and whose office is located at:

[enter office address here] as a back-up Professional Executor.

3. Authority of Professional Executor

I hereby grant my Professional Executor full authority to:

a. Act on my behalf in making decisions about storing, releasing and/or disposing of my professional records.

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.

4. Name of Legal Counsel and Personal Will Executor

A. My lawyer for my Personal Will is [enter name of your lawyer here] whose phone number is: [enter phone number here] and whose offices are located at: [enter office address here].

B. The executor of my current personal will is [enter name of executor of personal will], whose phone number is: [enter phone number here] and who is located at: [enter address here]

5. Essential Professional Practice Information

A. My current client records are located at my office: [enter office address here]

B. My past client records are located at: [enter address(es) here]

C. My Psychological Test materials are located [enter location here].

D. Billing and financial records related to my psychology practice are located here: [enter address here].

E. Some or all of my client, billing and financial records are on a computer, located at [enter address here] and my password (s) are as follows: [enter any passwords here].

F. My appointment calendar is located [enter location here], and client phone numbers are located [enter location(s) here].

G. My e-mail address(es) is/are [enter e-mail address(es) here], and the password(s) is/are: [enter password(s) here]

H. My office voice mail number is: [enter office voicemail here]

and the voice mail access code is: [enter voice mail access code here]

I. Any necessary keys you will need for access to my office are [enter location of keys]. Keys for the filing cabinet are located [enter location here].

J. For assistance in locating/accessing my records you may contact [enter contact phone number(s) and address here].

K. In addition, the following person(s) may be helpful in locating/accessing my records: [enter any additional names, addresses and phone numbers here].

6. Specific instructions for my Professional Executor are:

A. First of all, I would like to express my deep appreciation for your willingness to serve as the Professional Executor for this will.

B. There are four copies of this Professional Will. They are located as follows:
[enter locations of all copies of the will, for example]:

- a. One is in your possession.
- b. One is in the possession of my lawyer.
- c. One is with my personal will.
- d. One is with my professional liability insurance policy, filed [insert location here].

C. The files, telephone numbers and addresses of current and selected past clients who can be notified about my death are located [here] in my office [enter office address here].

a. Please use your professional judgment and discretion in deciding how you want to notify current and (if necessary) past clients and whether or not to publish a notice in the newspaper notifying clients of my death, incapacity or other unavailability and who to contact for further information. You should contact our regulatory body [contact information here] to ensure this decision meets our jurisdictional regulatory requirements.

b. If clinically indicated, you may wish to offer a face-to-face meeting with some clients. You may also wish to provide three referral sources, which can, of course, include yourself [if appropriate].

D. My professional liability insurance is currently provided by:
[enter name of insurance provider and address and phone number here]

My policy # is: [enter number of insurance policy here]

Please notify my professional liability carrier in writing of my death as expeditiously as possible and arrange for any additional coverage that may be appropriate. The professional liability carrier may require a copy of my death certificate or other proof of my death. Please also notify the jurisdictional regulator of my passing.

E. If requested and authorized by the client, arrange for copies of referred clients' records to go to their new therapists. All remaining records should be maintained according to the requirements of our jurisdictional regulator, which are (at the time of writing) as follows: [insert regulatory requirements here].

F. For immediate assistance, it is recommended that you contact, the Board Administrator/Registrar.

G. Arrangements have been made in my Personal Will so that you may bill my estate for your time and any other expenses you may incur in executing these instructions.

I declare that the foregoing is true and correct.

Signatures:

Executed at _____
(location) (Date)

(Signature of Registrant) (Date)

I agree to serve as Executor for this Professional Will:

(Printed Name of Professional Executor)

(Signature of Professional Executor) (Date)

I agree to serve as Back-up Executor for this Professional Will:

(Printed Name of Back-up Executor)

(Signature of Back-up Executor) (Date)

WITNESSES: _____
(Printed Name of Witness)

(Signature of Witness) (Date)

Sample Professional Will #2 (PA)

Instructions for the disposition of _____ professional practice, in the event of death or disability.

1. Professional Executor

Who do you trust to carry out your professional directives? Who would be willing to do so? Who is stable and likely to be around when/if you are not? Pick two individuals, first line and back-up person.

Name	Address	Phone	Agrees?	Date Discussed
_____	_____	_____	Yes No	_____
_____	_____	_____	Yes No	_____
_____	_____	_____	Yes No	_____

2. Professional Contacts:

a) Professional practice attorney:

Name	Address	Phone
_____	_____	_____

b). Tax accountant:

Name	Address	Phone
_____	_____	_____

c). Malpractice insurance:

Name	Address	Phone	Policy Number
_____	_____	_____	_____ d).

Billing agency:

Name	Address	Phone	Policy Number
_____	_____	_____	_____

3. Patient Records Location(s):

a) address of office where files are located: _____

-

1) office key location: _____

2) who else has access to office key _____

3) security code to de-activate office alarm: _____

b) location of open patient files within office _____

1) open file drawer(s) key location: _____

c) location of closed patient files within office _____

1) closed file drawer(s) key location: _____

d) location of current patient schedule: _____

1) instructions to access patient schedule _____

e) location of patient billing files and records: _____

1) instructions to access patient billing records: _____

-

f). voice mail access instructions _____

4. Specific Instructions for Professional Executor:

Location of cop(ies) of this professional will: _____

a. Thank you very much for your assistance with a difficult task.

b. In the event of a serious illness or injury, when I am unable to work for more than two weeks but am able to communicate effectively: Please contact me as soon as I am able to communicate, to determine how to proceed with temporarily putting my practice on hold, contacting patients, etc. **Whatever I communicate to you at that time will take precedence over this document.**

c. In the event of my death, or my temporary or permanent decisional incapacitation as determined by a physician or licensed psychologist:

1. Please telephone all scheduled patients and notify them discretely, with minimal necessary details, of my current circumstances. Any limitations to contacting patients via telephone will be stipulated on their contact information pages, found _____. Assess their psychological vulnerability and need for ongoing psychological intervention via recent therapy notes and your telephone conversation. Make professional referrals as appropriate and acceptable to the patient, after obtaining their permission to release their name and records. Please make an effort to match each patient to a provider who is approved or is on the panel of that patient's insurance company. Please offer each patient at least one face-to-face therapy session, individual or group format, with yourself or another professional therapist that you designate, to process the event of my death or incapacitation. In the event that any patient is unable to pay for this session, and/or insurance coverage for the session is denied, it is my wish and direction that my professional corporation's funds be used to compensate you or the designated professional therapist at their current hourly rate, for this one session. Patient permission should be obtained to forward relevant case records to this therapist prior to the scheduled session.

2. Should patients request information regarding attendance at a memorial service, or contributions, please direct them to any professional service/collections being arranged. It is my wish that my personal services remain a private affair for family, friends and colleagues.

3. Records of patients referred to a new therapist should be forwarded to their new therapist if the therapist so chooses. All remaining records should be maintained in a safe, confidential place for the minimum number of years currently required by current state or federal law. Please dispose of all records

not required to be maintained by such laws in a manner which destroys completely all identifying patient information, such as shredding or burning.

4. Please notify my malpractice insurance carrier of my death or incapacitation. Request that my billing service notify managed care companies with whom I have current contracts.

5. Please refer to _____ (stipulate party you wish to handle your financial affairs), at address and telephone number _____, any financial decisions be made regarding payment of any outstanding bills, and patient bill collections for amounts over \$100.00. I request that any patient uncollected accounts under \$100.00 be waived. In the event of their concurrent incapacitation or death, please refer these decisions to the designated Executor of my personal estate. If there is a clinical component to these patient-based financial decisions, please review the file and share the minimal pertinent information necessary to make an informed decision.

6. Be sure to bill my professional corporation for your time and any other expenses that you incur in executing these instructions, as well as the time of anyone you designate to

assist you in these efforts.

7. In addition to this copy of the Professional Executor Instructions, given to _____ as my Professional Executor, there are two other copies, located in _____.

Date

(Notarized Signature)

Appendix II: Sample Preparation Checklist

To assist licensees/registrants in ensuring they have addressed all necessary steps in the process of retiring/closing a practice, the following from the BC College of Psychologists is offered as a sample of a checklist that licensees may find helpful.

Planning for Retirement, Relocation, or Extended Absence from Practice Checklist

This document is intended to be of assistance to registrants with respect to their planning for retirement, relocation, or extended absence from practice. Relevant Code standards are indicated in brackets following the checklist items.

- I have notified clients of the expected date of my retirement, relocation, or extended absence well in advance to allow time for questions and concerns, and for processing reactions to the transition. I have set a specific date for termination and have been consistent in my discussions with clients. (3.29, 5.1, 5.17, 5.18, 5.19, 8.2, 14.6, 14.7)*
- I have planned a clinically appropriate termination for each current client and have made an assessment of each client's future needs and discussed my recommendations with them. I have made plans to transfer clients requiring continued care to another registrant or mental health professional. (3.6, 5.1, 5.19, 5.26, 8.2)*
- [For registrants in private practice] I have offered clients who are to be transferred several referrals, and have obtained a release to forward a copy of the record or a summary of the record to the new clinician. (3.6, 5.1, 5.19, 6.2, 8.2)*
- [For registrants in public or institutional practice] I have, if I was able to, provided several options to clients depending on the organizational structure, including introducing clients to the new clinician. I have determined whether I need to make arrangements to transfer records information. I have considered the option of preparing a letter to clients and selected former clients about my plans and have taken action in accordance with the clients' best interest. (3.6, 5.1, 5.19, 6.2, 8.2)*
- I have prepared or updated instructions for my professional executor in the event of my death or incapacity. I have ensured that my executor has a copy of these instructions and will provide to them any updates I make to it. (14.6, 14.7)*
- I have provided written information to current and selected former clients regarding how to access their records, and have specified that records will be destroyed once the required recordkeeping interval has elapsed. I have made arrangements for access to my records by providing to these clients an appropriate means by which to contact me or my professional executor (e.g., telephone number or mailing address). (14.6, 14.7)*
- I have consulted with respected colleagues as appropriate during the transition period, regarding client welfare, transition process issues, or other matters. (3.2)*
- [For registrants in private practice] I have informed relevant referral sources about my plans and provided alternate referral information as appropriate. (3.2, 5.1)*
- [For registrants in private practice] I have ensured secure storage of my practice records, appointment books, financial records, and any test materials, including computerized testing materials, I plan to retain. (14.1, 14.2, 14.3, 14.4)*
- [For registrants working in institutions where records are kept and managed by a central records office] I have*

reviewed the need to ensure that client test protocols and test materials are clearly marked for review only by a qualified professional and have taken action, if appropriate. (14.8)

- I have made, and will retain and regularly update, a list of records that have been stored, and the date on which these should be destroyed. I will destroy outdated files or have them destroyed by a confidential shredding company. I have reviewed computer-based records, and destroyed outdated files and outdated files on computers that will be out of my dominion and control. (14.4)*
- I have ensured adequate professional insurance to cover time I am not practicing, including 'tail' insurance to cover liability after retirement. I understand that this coverage is important, as lawsuits or ethics complaints may be filed after I stop practicing, regarding services I provided while in active practice. (3.8)*
- I have notified the College of Psychologists of B.C. in writing if I wish to apply to move into the Non-Practicing class of registration (e.g., Non-Practising, Out-of-Province, or Retired) or if I wish to be taken off the register. I have consulted current policies regarding any status changes, as my ability to return to the active practice in the future, should my circumstances change, may be impacted by my decision. (3.8)*

Appendix III – Notices & Letters Templates

When closing a practice, a practitioner may choose to write each client, with an outline of the planned closure and steps to be taken to transition them and their records to a new practitioner. Of course, in the event of an unplanned closure (death or incapacity), the letter's contents will be different, however this sample from Pennsylvania offers an example of how this may be addressed.

April 15, 2000

*Jane Smith, Ph.D.
123 Anywhere St
Pretty Place, PA 16602*

Dear (Patient first name):

I am writing to let you know that I will be closing my practice in Psychology during the summer of 2000. My partner is unexpectedly facing a major job change, and we have decided to move to Western Pennsylvania to be closer to our families.

I have very much enjoyed working with each of you during my six years of practice in Pretty Place. I have learned a great deal from you, and I hope that our work has improved the quality of your life.

At this time, I anticipate that I will be leaving the area in mid-July. For those clients whose work with me has ended, I am happy to schedule a session for those who may want to discuss my leaving and your future therapeutic plans. For those with whom I am still working, we will discuss my leaving and plans for your transfer to a new therapist over the next several weeks. It is very important to me that you be established with your new therapist before I leave, and that this new therapist be someone that we both respect and trust. I will assist in this transition as much as I possibly can.

Please call me at (555) 123-4567, so we can discuss how or if my transition will have an effect on you. If I do not hear from you and you do not arrange for transfer of your psychological records, I will take them with me. I will send each of you a change of address before I leave the area.

Although this transition was quite unexpected in my life, I am feeling very positive about our move. However, it is still with deep sadness that I will close my practice here in Pretty Place.

*Sincerely,
Jane Smith, Ph.D.*

Active Client/patient Notice Template for Professional Executors

Dear (client/patient's name):

I am writing to inform you that the practice of NAME is closed effective immediately due to REASON (illness; that they are no longer employed with ORGANIZATION NAME; as they have passed away). Please be advised that I am NAME'S Professional Executor. I am contacting you in that role and as you are on record as an active client/patient of NAME.

Please be assured that your personal health record has been secured by me and will be handled in accordance with the requirements of the NAME OF LEGISLATION/professional standards as required by NAME of REGULATORY BODY. Your record is securely housed at LOCATION.

As NAME'S Professional Executor I am available to assist you in arranging for your continued care should you wish this. If you would like my assistance in accessing another Psychologist/service provider please notify me in writing prior to DATE, and I will make every effort to accommodate your needs.

If you would like a copy of your health record to be transferred to another Psychologist/health service provider, please sign the enclosed authorization form and return it to my office as soon as possible prior to DATE. Upon receipt of your authorization form, I will make the appropriate arrangements concerning your file.

Should you have any questions in regard to this letter please do not hesitate to contact me directly at NUMBER and/or ADDRESS.

Sincerely,

NAME

Notice of Close of Practice (Colleagues, Professional Associations) Template

Dear (name of individual or agency):

I am writing to inform you that the practice of NAME is closed effective immediately due to REASON (illness; that they are no longer is employed with ORGANIZATION NAME; as they have passed away).

Please be advised that I am NAME'S Professional Executor. Should you have any questions in regard to the close of their practice or management of their client/patient records please do not hesitate to contact me at TELEPHONE NUMBER/EMAIL ADDRESS/MAILING ADDRESS.

Sincerely,

NAME

Draft Advertisement Announcing the Closure of Practice

CLOSURE OF PRACTICE NOTICE

Please be advised that the psychological practice of NAME has been closed effective DATE. Client/patient health records have been securely maintained in accordance with NAME OF PRIVACY LEGISLATION and the professional standards required by NAME OF REGULATORY BODY. Requests for information or transfer of the client/patient health record should be sent in writing to NAME/ADDRESS identifying what is being requested, who the information is to be transferred to, along with a signed consent for the transfer.