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What is This?
The Professional Will: An Ethical Responsibility

Loretta J. Bradley, Bret Hendricks, and Douglas R. Kabell

Abstract
Attention is directed to the ethical responsibility for the counselor to develop a professional will. Essentially the professional will is a roadmap for what the counselor directs to happen in the event that the counselor becomes incapacitated due to sudden death or illness. A model of a professional will is provided.

Keywords
ethics, ethical responsibility, confidentiality, incapacitation of counselor, professional will

Prior to a counselor’s retirement, it is given that it is the counselor’s ethical responsibility to make arrangements for the disposition of client records, client referrals, and/or the termination of client services if warranted. Although the above are expected from a counselor prior to retirement, what about the counselor who is not planning to retire but instead is forced to retire because of incapacitation due to sudden illness or death? A salient question is should prior planning have been made by the counselor before that counselor became incapacitated due to sudden illness or death? Unless a counselor expects to “live forever,” the answer to the above question is yes. That is, the counselor has an ethical responsibility to make decisions that protect the client. One of the ways to protect the client is to prepare a professional will.

Professional Will
According to Pope and Vasquez, (2005), a professional will is a plan for what happens if the therapist dies or is incapacitated without warning. The professional will is a plan that helps in meeting the needs of clients and allows for unfinished business to be taken care of promptly and efficiently.

Busey (2008) described a professional will as a roadmap of what should be done with the practice of a professional who dies or is incapacitated. Busey cautions that a professional will is not a document that disposes of tangible property, but instead, it is a document designating and instructing an individual or individuals to terminate or continue counseling services to a client in a manner that provides for the needs of a client. Steiner (2011), in describing a professional will, described it as a backup plan that every clinician needs. She further described a professional will as that document that gives details for the treatment of clients when the clinician is absent due to retirement, death, or serious illness.

In considering the above definition, an important question arises. That question is what are the common denominators in the above definitions? In answering this question, it is apparent that the authors are saying that a professional will is a “must.” That is, all counselors should have a professional will to provide direction for the client’s care in the absence of the counselor. The directive should be precise in specifying what happens to the client’s needs, records, and continuation of counseling services. In all instances, the professional will must be focused with protecting and preserving the welfare of the client. Having a professional will written in advance of the counselor’s absence will not only help the client, but in addition, it will be of help to colleagues and family not only in terms of the disposition of the case but also in terms of preserving confidentiality.

Confidentiality
Confidentiality is one of the major tenets on which counseling is based (Corey, Corey, & Callanan, 2007). Despite its importance, confidentiality cannot be guaranteed, and in fact, limits to confidentiality have been discussed (Bradley, Hendricks, & Kabell, 2011; Corey, Corey, & Callanan, 2007; Steiner, 2011; Werth, Burke, & Bardash, 2002). Despite the limitations to confidentiality, researchers are careful to assert that when at all possible, confidentiality must be maintained. Further the Ethical Code for the International Association of Marriage and Family Therapists (2005) states that confidentiality is a basic professional responsibility and should be maintained even in situations where legal requirements conflict with the therapist’s ethical obligations.

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The introduction of Section B states:

Birdsall, 2011) and the precaution to protect the client’s confidentiality.

Therefore, the counselor takes every reasonable want to violate that confidentiality even if the counselor suddenly dies. Therefore, the counselor takes every reasonable precaution as to how to protect clients’ confidentiality, while desired, may not be guaranteed.

The Ethical Code for the International Association of Marriage and Family Counselors (Hendricks et al., 2011) in the introduction of Section B states:

Professional counselors maintain appropriate boundaries so that clients reasonably expect that information shared will not be disclosed to others without prior written consent. Due to the nature of couple and family counseling, safeguards must be established in the counseling process to insure privacy of client disclosures without contributing to dysfunctional family secrets. Clients have the right to know the limits of confidentiality, privacy, and privileged communication including the fact that family members may themselves disclose counseling-related information outside counseling. Thus, couples and family counselors should inform clients that while confidentiality may be maintained by the counselor, the counselor has no control over information that family members may share with one another. Therefore, in these instances, confidentiality, while desired, may not be guaranteed.

The ACA Code of Ethics (2005) in Section B states:

Counselors recognize that trust is a cornerstone of the counseling relationship. Counselors aspire to earn the trust of clients by creating an ongoing partnership, establishing and upholding appropriate boundaries, and maintaining confidentiality.

The above professional codes of ethics are clear that confidentiality is the cornerstone of the counseling relationship. In addition, to focusing on confidentiality generally, the above codes focus on confidentiality specifically with regard to incapacitation and death.

In Section B.6.h, the ACA Code of Ethics (2005) states:

Counselors take reasonable precautions to protect client confidentiality in the event of the counselor’s termination of practice, incapacity, or death.

In counseling, the confidentiality of the client is, for the most part, of such paramount importance, the counselor does not want to violate that confidentiality even if the counselor suddenly dies. Therefore, the counselor takes every reasonable precaution to protect the client’s confidentiality.

In Section C.2.h, the ACA Code of Ethics (2005) offers the counselor further guidance as to how to protect clients’ confidentiality due to the counselor’s incapacity, or death.

When counselors leave a practice, they follow a prepared plan for transfer of clients and files. Counselors prepare and disseminate to an identified colleague or “records custodian” a plan for the transfer of clients and files in the case of their incapacitation, death, or termination of practice.

The Ethical Code for the International Association of Marriage and Family Counselors (Hendricks et al., 2011), is very specific when it states in Section B.11:

Couples and family counselors take reasonable precautions to ensure clients’ access to records and client confidentiality in the event of a counselor’s death or incapacitation. Additionally, couples and family counselors are encouraged to have a written plan, such as a professional will, specifying individuals who take charge of client records if the couples and family counselor terminates his/her practice for any reason.

Another ethical consideration is abandonment of the client. Both the ACA Code of Ethics (2005; Section A.11.a) and the Ethical Code for the International Association of Marriage and Family Counselors (Hendricks et al., 2011; Section A.12) warn against the abandonment or neglect of the client. While the sudden death of the counselor is unexpected and unintentional, it still might be viewed by the client as abandonment. Certainly, the counselor wants to always avoid harming the client (ACA Code of Ethics, 2005; Section A.4.a) even if the counselor’s death is unexpected. The paramount principle behind this concept is the welfare of the client (ACA Code of Ethics, 2005; Section A.1.a).

Case Studies

To illustrate some of the issues concerned with the incapacity of the counselor, the following cases are presented. Please note these cases are fictional and bear no resemblance to any person living, or deceased.

Case Study: Peter Smith

“The driver’s blood alcohol level was twice the legal limit,” the reporter stated as she looked into the camera and reported the news that Peter Smith, a family counselor, had been killed in a two vehicle collision. Smith, who was on his way home from work when the intoxicated driver’s car collided with his vehicle, was killed instantly. He had been a family counselor in private practice for 16 years. His practice encompassed many specialties, including clients with substance abuse issues mandated by courts to receive counseling. He did not employ office assistants and contracted with a billing service to do his billing. Meticulous in his documentation, Smith had treatment plans for each client along with their respective counseling notes. Smith had a will directing his brother in the disposition of his personal assets. However, he did not have any provision in his will regarding his counseling practice, nor did he have a professional will. Following Smith’s death, his brother Richard is now faced with a dilemma. Namely, what is he to do with Smith’s practice and his records? In the absence of a professional will, he is confused. Richard is not a counselor. Thus, he chooses to ignore calls from his brother’s clients. He wants to “do the right thing” and “not make hasty decisions” regarding his brother’s practice. As time goes by, the clients’ calls
become increasingly urgent as messages are left on the answering machine at Peter’s office. Clients are requesting referrals and records. After deliberation, Richard decides to act as if the practice is any other type of business. He decided to simply “close” the business. He disconnects the answering machine and destroys the records. He places a notice in the newspaper, “Peter Smith, now deceased, no longer is conducting family counseling.” Then, he breathes a sigh of relief. “Thank goodness I don’t have those headaches to deal with anymore. Now I can get on with my life!”

The following are important questions and answers to consider.

1. In considering the questions with which Peter Smith’s brother is faced, what components of a professional will would be especially helpful to deal with the closure of the practice?
   It would have been helpful if Peter Smith had a professional will containing the information in the “Records” section of the Professional Will provided in Appendix A. Please note that this section includes the following directives:
   A. Disposition of records.
   B. Referral procedures for clients in the event of unplanned termination.
   C. Instructions for collecting pending billing.

2. What could Peter Smith have done to facilitate the transition of clients following his death? Specifically, what directives might he have provided regarding the referral of clients?
   If Peter Smith had included a section in his professional will which specified his professional executor and alternates, clients would have had provisions for continuous care.

3. How could Peter have provided continuity of care for those clients who were court mandated? What “special procedures” might he have included to provide continuity of care for these clients?
   Peter Smith needed to have a component of his professional will with specific procedures delineated for court mandated clients. In this section, he should have provided information, through consultation with his referral sources, regarding special procedures for continuity of care and disposition of client records for court mandated clients. For example, in Appendix A, the professional executor and alternates are the custodians of the records. Furthermore, for court-mandated clients, Smith should specify any specialized treatment providers who have requisite training to provide services for his clients.

4. What could Peter have done to provide more insight regarding his billing? What special provisions need to be made to insure a third party has the ability to access information about billing, especially when the billing is contracted?
   Appendix A of this article is an example of a professional will. In this example, the section titled “Records: Client and Financial” provides information regarding the disposition and procedures regarding client financial records and billing. If a clinician utilizes a contracted billing service, contact for the billing service should also be included in this section of the professional will.

**Case Example: Hugo Miller and Arianna Hernandez**

“I want my daughter’s records, please.” The man before Arianna had a pleasant demeanor and was very polite. He seemed to be a model of decorum. Arianna attempted to reassure the man and told him to come back later when she would have an answer for him. She asked for a copy of his identification, which he gave her, although he appeared a little reluctant to do so. Trying to reassure him that she would contact him as soon as possible, Arianna asked him to leave her office because she had another appointment. Before her appointment, Arianna made herself a note to retrieve the file.

Arianna Hernandez, a family counselor, has a large private practice which has recently grown larger. The growth of the practice was unexpected, due to the death of Arianna’s associate, Hugo Miller, another family counselor whose private practice is across town. A month ago, Hugo suddenly became ill and was taken to the hospital where he died two days later. Hugo had previously designated Arianna in his professional will to be his professional executor in the event of his death or incapacitation. Thus, Arianna obtained all records from his office. Furthermore, Hugo left explicit instructions in his will regarding referrals of clients to appropriate providers.

Arianna spent much time during the ensuing weeks following Hugo’s death contacting clients and discussing their care. The clients were understandably shaken, and Arianna did her best to assist them, not only helping them find other counselors but also helping them deal with their grief and loss issues related to Hugo’s sudden death. Hugo had, in his professional will, explicitly instructed Arianna to help the clients as she deemed appropriate with transition issues, including grief and loss issues.

Meanwhile, Arianna retrieved the file that had been requested by the minor client’s father. When Arianna retrieved the file what she found surprised her. The file recorded that this man had no rights to the child’s records. Instead, his parental rights had been terminated due to neglect and physical abuse. Arianna made a mental note to contact the child’s mother, her legal guardian, and tell her of the father’s request.

1. What might have happened if Arianna had released the file inadvertently to the father of the child?
   If Arianna had released the file, she would have violated confidentiality.

2. How did Hugo’s professional will assist in the facilitation of client referral?
   Hugo had specific directives in his will regarding the disposition of his records. Thus, all records are now under the care of a professional executor, who knows what to do when requests for records occur, thereby preventing inadvertent disclosures of safeguarded information.

3. How did Hugo’s inclusion of access to billing records assist in the continuation of care for his clients?
The inclusion of billing information provided ethical and legal protection of all client records, clerical and clinical, during time of transition.

4. How did Hugo address the therapeutic needs of his clients regarding their feelings of grief and loss? Why is this an important component of the professional will?

Hugo made provisions for client’s feelings of grief and loss by instructing his professional executor to address these issues with his clients.

**Professional Will: Contents**

Although the need for a professional will has been advocated (Busey, 2008; Lancaster, 2003; Lane, 2011; Pope & Vasquez, 2005), the lack of literature describing the contents of a professional will seems to suggest that the preparation of a professional will is not a common occurrence. Following an extensive literature search, a small amount of information was found that detailed the contents of a professional will (Cooper & Ramage, 2006; Rutzky, 2009; Steiner, 2011).

Steiner (2011) states that a professional will should address the following questions:

- What will happen to your group and your practice?
- Who has access to your office keys, patient contact information, and other details needed in an emergency?
- Who has your voicemail access code and appointment schedule?
- Who will cancel or triage your patients?
- How do you want your patients and their records handled if you are out of commission, either temporarily or permanently? (p. 35)

In an earlier article, Steiner (2001) described the professional will as a document where the covering therapist can find essential information (e.g., patient information and phone numbers, office and file keys, computer password, code for burglar alarm).

In the professional will, one of the first tasks is to name a professional executor (Cooper & Ramage, 2006; Lane, 2011) or a team, the emergency response team (ERT; Rutzky, 2009; Steiner, 2002).

Cooper and Ramage (2006) state that a first task is to name a professional executor who is asked:

> to attend to the welfare of clients and supervisees and others and to attend to related matters such as finance. A second important task is to deal with the therapist’s ongoing work commitments, such as teaching, training, writing and editing. (p. 25)

The professional executor is named through a statement (clause) or a codicil. Further the authors state that the next-of-kin must be aware of this appointment or otherwise in the absence of a professional will, the therapist will die intestate and everything will pass as outlined in the therapist’s personal will, a situation that could jeopardize the client’s confidentiality.

Rather than appointing a professional executor, Rutzky (2009) and Steiner (2002) recommend that an ERT be named. Rutzky suggests that the team be composed of three members. He states that the members of the ERT should inform patients by phone of the therapist’s death or incapacitation, cancel appointments, offer consultation, and/or referrals to other therapists.

Using the information from the above article and permission from J. Rutzky to use his Profession Will model as a foundation (personal communication, February 10, 2012), the authors provide a Professional Will in Appendix A. As Appendix A indicates the Professional Will is the counselor’s attempt to provide for the welfare of clients in his/her absence. The Professional Will in Appendix A is designed to be exemplary, not exhaustive. The authors caution that a Professional Will must be written to attend to the individual needs of the counselor and clients served by the counselor, and therefore, the contents of the will may vary to meet individual needs.

**Conclusions and Recommendations**

The writing of a professional will is an extension of providing for the welfare of the client. When there is a sudden cessation of the counselor’s practice due to incapacitation from death or illness, the professional will provides a roadmap for the continuing care of clients.

Although the Ethical Codes for the International Association for Marriage and Family Counselors by Hendricks, Bradley, Southern, Oliver, and Birdsall (2011) and the ACA Code of Ethics (2005) clearly point to the need for protecting the welfare of the client in the absence of the therapist, the number of articles focusing on a professional will is sparse; this caused the authors to ask if few articles are written, does this indicate that many counselors are not preparing professional wills?

Since preparing a professional will is an ethical responsibility, the authors recommend that each counselor prepare a professional will. To assist in this process, the authors prepared a model for the development of a professional will. This model is presented in Appendix A. The authors wish to stress the Professional Will presented in Appendix A is a model for consideration as each counselor will need to individualize their professional will. That is, while common elements exist in the contents of a professional will, the Will will not be identical for all counselors.

In summary, this article discussed some of the common elements for a professional will. The authors recommend that all counselors, regardless of age and theoretical orientation, prepare a professional will. It is the ethical responsibility of the counselor to prepare a professional will for to do otherwise could result in harm and/or abandonment of the client.

**Appendix A**

**Professional Will**

**Name:** ____________________________________

**Overview:** This Professional Will is written to attend to the professional needs of my clients and my work. This will is written to focus on eight main areas: Professional Executor...
& Alternates, Informing Clients, Answering Machine & Receptionist, Records (Client & Financial), Professional Liability Insurance, Copies of Will, Other Information and Signatures. In the event that I become incapacitated due to death or illness, I direct that this Will become effective immediately. I therefore direct that the following occur.

Professional Executor and Alternates
I have named ____________________________ as my Professional Executor. In the event that my Professional Executor is unable or unwilling to implement this Will, I name ____________________________ as first Professional Executor Alternate and ____________________________ as second Professional Executor Alternate.

Professional Executor (address/phone) ________________

Professional Executor Alternate I (address/phone) _______

Professional Executor Alternate II (address/phone) _______

Informing Clients
The Professional Executor should inform my clients of my incapacitation by return receipt, certified letter. All of my appointments should be cancelled and recommendations for referral should be made so as to protect the welfare of my clients. If any clients come to my office prior to the letter being received, then I direct my Professional Executor to meet with my clients to explain my situation and to make referrals to other counselors as needed. Addresses and phone numbers for my clients can be found in the first folder marked “Clients” in my locked file cabinet in my office. The key to my file cabinet is on my key ring and an extra key is kept by my personal attorney ____________________________ (Name/address/phone).

Answering Machine and Receptionist
Upon my incapacitation from death or disability, the answering machine for my office should have a new message placed on it promptly as follows:

You have reached the office of ____________________________
who has asked that you call ____________________________
(list name of Professional Executor at phone number _______
______________________) If you have an emergency, please
call the receptionist (list name, phone number). If the receptionist is unavailable, please hang up and call 911 or go to the nearest emergency room.

Records: Client and Financial
My client records are kept in the locked file cabinet (second drawer) in my office. I direct my Professional Executor to review my notes and records and make referrals to other counselors as needed. Since a major portion of my practice is couples and family counseling, I caution the Professional Executor to be cognizant of my caseload as decisions are made for referral. With regard to financial records, my billing records are in the bottom drawer of my locked file cabinet, and they are detailed for each client. I direct my Professional Executor to bill for any outstanding amounts owed to me. If it is determined that any client is late with payment because he/she cannot afford to pay, then I ask my Professional Executor to use good clinical decisions with regard to the collection of the fee.

If any of my records need to be destroyed, I direct my Professional Executor to destroy the records in accordance with ethical codes and state laws. In all instances, sound standard of care must be adhered to.

Professional Liability Insurance
I direct my Professional Executor to contact my professional liability insurance carrier to inform the carrier of my situation. My professional liability insurance policy is in the second drawer of my locked file cabinet. Information about my professional liability insurance is provided below:

Name of Insurance ____________________________
Policy Number ___________________________________
Address/Phone of Insurance Company ________________

Copies of Will
Copies of this will (following appropriate signatures) were given to my Professional Executor, Alternates, Office Manager, and Attorney (private attorney).

Other Information
Other information and/or directions specific to this Professional Will are provided below.

Signatures
Counselor ____________________________ Date _______
Professional Executor ____________________________ Date _______
Alternate I ____________________________ Date _______
Alternate II ____________________________ Date _______
Witness ____________________________ Date _______
Notary ____________________________ Date _______
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