

Professional Wills: Preparing for the Unexpected and More!

RICHARD BLOCH, ESQ., MPA LEGAL COUNSEL

Psychologists are one of those practitioners of healthcare that have the most stringent rules for protecting confidentiality. There are laws, regulations, codes of ethics, and the standards of the profession, as well as clinical issues, governing your maintenance, destruction and release of client information. Nonetheless, psychologists are subject to the same human frailties as everyone else, and must prepare for unanticipated circumstances requiring others to have access to their files and patient information in the event of incapacitation or death. Maryland law provides a guide for what must be done in Section 4-403(e) of the Health General Article:

“After the death, retirement, surrender of the license, or discontinuance of the practice or business of a [psychologist], the administrator of the estate or a designee who agrees to provide for the maintenance of the medical records of the practice or business and who states, in writing to the [Board of Examiners of Psychologists] within a reasonable time, that the records will be maintained in compliance with this section shall:

- (1) Forward the notice required in this section before the destruction of medical records; or
- (2) Publish a notice in a daily newspaper that is circulated locally for 2 consecutive weeks:
 - (i) Stating the date that the medical records will be destroyed or transferred; and
 - (ii) Designating a location, date, and time where the medical records may be retrieved, if wanted.”

Having a “professional will” is one way to plan and provide a guide for



Preparing a professional will is one way to protect your clients, your family, your estate, and you.

others to follow. However, a professional will is not a Will as such. A Will provides for the distribution of your estate when you die. A “professional will” is more of a directive and authorization for the handling of your professional affairs under certain circumstances. Your designee does not have the inherent legal rights of an executor of an estate. The two documents should coordinate with each other. You may want to consider whether the designee, other than the executor in the event of your death, should have a limited power of attorney to act on your behalf regarding your professional obligations, as a professional will does not have legal authority in Maryland. If you do not have a professional will, your executor will be

charged with the responsibility of handling the closing of your practice.

You should select a designee carefully. In most instances, I would recommend that it be another psychologist. Your designee will have to determine which files are covered by the notice provisions of Section 4-403. If you have not periodically destroyed older files, the number of files may be daunting! If you have treated minors, the number of files you have retained will probably be exponentially higher.

It all sounds simple. However, there are details that must be considered, including the realities of the electronic world in which you practice. Passwords, computer files, email accounts, electronic

health records, appointment books, voice mail, and keys to offices, cabinets, and desks are just a few of the many items a psychologist must consider making available to an executor or other person charged with protecting, accessing, distributing, and/or destroying your confidential charts and information. Some of this information may also need to be available to someone covering your practice in the event of your incapacity or even a long term absence from your office. If you are on Facebook, Twitter, or other social media, these need to be itemized with relevant passwords. If you have contracts or association memberships that are ongoing or automatically renewed, this information needs to be provided, along with the terms and termination provisions. If you are paying expenses electronically with a credit card, find out how the payments can be stopped. Include relevant information about your professional liability policy and property/renters insurance.

A professional will should include all of your professional information, professional licenses, office addresses, location of hard-copy of current and closed files, how the files are accessed, a list of personal belongings if the space is rented or you are in a group, contact information for all clients, appointment books, names and contact information of office staff and colleagues, financial information (accountant, accounts receivable, payables), and the insurance plans with which you participate and the contracts for each.

In drafting a professional will (like all estate planning), you should consult your attorney, be familiar with your legal and ethical responsibilities, and be sure the person you designate is aware of your expectations and the location of the professional will.

You should review a professional will on a regular basis to assure it is current and continues to reflect your intentions. Planning for the unexpected is always a

good idea, but not always easy to do. Preparing a professional will is one way to protect your clients, your family, your estate, and you. Ψ

Richard Bloch, Esq., is President of Shiling, Bloch & Hirsch, P.A. and has been in private practice in Maryland since 1972. He received his B.A. from the George Washington University and his J.D. from the University of Maryland School of Law. His practice focuses primarily on health law, representation of health practitioners before the licensing boards, estate planning, general business, trade association law, and civil litigation. He is a member of the American Bar Association, the Maryland Bar Association, and the Baltimore County Bar Association. Mr. Bloch has been General Counsel to the Maryland Psychological Association since 1979. He has written numerous articles and lectures frequently on legal and ethical issues pertaining to the practice of psychology and mental health.





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