Beyond the professional will: Are you prepared for the unexpected?

Berna G. HabermanApril 17, 2013

You may be thinking “it” will never happen to me and stop reading here. But, yes, “it” can happen to you, so keep reading! Consider the following very real possible scenarios:

Vacation: You were a passenger on the *Costa Concordia* (January 2012). Disaster struck. Your body was lost at sea. Who will contact your clients? What will happen to your clients’ records? Who can release the records? Does another professional know where your records are kept?

Family Emergency: Monday morning your mom calls to say your dad has had a stroke. Can you come immediately? You buy a plane ticket, pack your bag and leave. You have 20 clients scheduled for next week. You do remember to take your client list. While under stress and anxiety, you now have to make 20 phone calls. Is there a better way?

Incapacity: You are in an accident or are suddenly ill and in a coma. Your family is under great pressure to make medical decisions for you. Your office phone keeps ringing. Do you have an emergency plan for a fellow professional to notify your clients that you will not be there?

These three example scenarios show why you need a professional plan of action for continuity of care and transfer of records.

How would you answer the following question? Are you aware that the ACA, AMHCA, NASW, AAMFT, APA and CRCC codes of ethics state that you need to have a plan of action for transfer of records in the event of your death, incapacity or when you are not able to be in contact with your office?

The following are excerpts from the respective codes of ethics.

ACA: Counselors need to prepare and disseminate to an identified colleague or “records custodian” a plan for the transfer of clients and client files in case of their incapacitation, death or termination of practice (ACA C.2.h.).

AMHCA: Counselors need to develop a plan in the event of their termination of practice, death or incapacitation by assigning a colleague or records custodian to handle transfer of their clients and files (AMHCA C.1.n.).

NASW: Social workers should take reasonable precautions to protect client confidentiality in the event of the social worker’s termination of practice, incapacitation or death. (NASW 1.07 (o) Privacy and Confidentiality)

Social workers who anticipate the termination or interruption of services to clients should notify promptly and seek transfer, referral or continuation of services in relation to clients’ needs and preferences (NASW 1.16 Termination of Services)

AAMFT: Subsequent to the therapist moving from the area, closing a practice or upon the death of the therapist, a marriage and family therapist arranges for the storage, transfer or disposal of client records in a way that maintains confidentiality and safeguards the welfare of the clients. (AAMFT Principle 11 Confidentiality 2.5)

APA: Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that the psychological services are interrupted by factors such as the psychologist’s illness, death, unavailability or retirement.

CRCC: Rehabilitation counselors prepare and disseminate, to identified colleagues or a records custodian, a plan for the transfer of clients and files in the case of their incapacitation, death or termination of practice. (CRCC A.8.d.)

After speaking with several individuals and conducting preliminary research, I discovered there are many articles on the “professional will,” but few if any on the topics of transfer of records and records custodians. A professional will is not sufficient to comply with the ethical standards. A professional will, if it is legal in your state, is probated after the individual has died. A professional will is not a plan of transfer.

I believe, based on the ethical codes cited earlier, that it is the obligation of every mental health professional to have a plan of transfer and a records custodian. This plan needs to be reviewed with each client to ensure that the client has been informed and has consented to this plan. I would suggest that you include this information as part of your client contract.

The following is not legal advice but rather suggestions for mental health professionals and/or their appointees to consider including as part of a plan of action should the therapist become unavailable, incapacitated or die. A caveat: Always consult a lawyer for legal advice; always refer to state or commonwealth and federal laws.

1) Appoint a records custodian. The following is an example of an agreement with a fellow professional.

I, Jan Jones of 1300 Stone Street, Framingham, MA, appoint Dana Smith, 1 Stowe Street, Natick, MA, 617-555-2013 to handle all emergencies related to my practice as a mental health professional. These emergencies may include vacations, illness, retirement, incapacity or death.

Dana Smith has access to my records and will act in accordance with the AMHCA and ACA codes of ethics, the laws of the Commonwealth of Massachusetts and the HIPAA regulations.

Counseling records must be kept for a minimum of seven years after the last date of service. I also direct Dana Smith to destroy my files by HIPAA-compliant standards after the seventh year from the last date of service. This can be completed on Dana Smith’s time schedule. All files should be destroyed within 10 years after my death or incapacity. If I have retired, I will personally destroy my files on this time schedule.

My files can be found in a locked cabinet in my office. The key is … And the code is …

Jan Jones\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_

Dana Smith \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_

The name and contact information of your records custodian needs to be shared with your clients, preferably in your client contract.

You may ask, “Can a spouse, partner, relative or friend serve as the custodian of records?” While the answer is technically yes, I would not recommend this. This might put an undue burden on the person. Also, the appointee needs to be aware of the HIPAA regulations and the codes of ethics that govern the transfer of records and confidentiality and the laws of the state or commonwealth.

2) I suggest that the mental health professional consult a lawyer to execute a Limited Power of Attorney and a Codicil to an existing will or write a new will including the information in the above agreement.

The Plan of Action for Continuity of Care and Transfer or Records includes additional information that may not be included in a will.

Professional documents: Malpractice insurance policy, copies of license/s, current certifications, NPI and CAQH number

Business records: Billing information, insurance panels, EAP panels

Client list: Up to date

3) Miscellaneous but important information.

Answering machine/voice mail: It may be disconcerting for past or potential clients and insurance companies to reach a disconnected number. I suggest you keep your present telephone number for six months and have your custodian of records record a message such as “Jan Jones is no longer accepting new clients. Please call Dana Smith at 617-555-2013 for additional information.”

Instructions for family and immediate associates: Family members and immediate associates need to be informed of your wishes and plans.

Letter to clients: You may wish to draft a letter to clients. Your custodian of records can send this letter as directed. I suggest that the letter reflect your personal view of counseling and the relationship you have to your clients. How do you want your clients to think about or remember you?

Disposal of records and retirement plan: This information can also be included in your personal action plan.

If this information is kept in a binder or file, then when your custodian of records needs to access it, there is a minimum amount of work and you and your family do not have to worry because you are in compliance with the respective codes of ethics governing mental health professionals.

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