

Closing a Mental Health Practice

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - January 2010

... A reader suggested that I address this subject, and upon reflection, I realized that in my many years of writing articles regarding legal and ethical issues affecting psychotherapists and counselors I don't recall directly addressing this particular aspect of practice. Some have asked - what are the legal and ethical issues involved with closing one's practice? Others ask - what is the practitioner required to do when closing a practice, and what should the practitioner do in order to protect herself/himself and his/her patients or clients? Some answers follow. It is important to understand that this topic is broader than it may first seem. This article will therefore not thoroughly address all aspects of the topic. Hopefully, the article will alert the reader to some of the more basic considerations and provide some general guidance.

A practitioner may need to close his or her practice for a variety of reasons, such as geographic relocation, career change, a desire to become an employee, or retirement. Most practitioners will at some time during their professional careers think about retirement. Some will be lucky enough to plan and execute their retirement well in advance of the reality of such status. During that period of time, thought must be given to the question of how closing the practice is to be handled with respect not only to clients, but to former clients, employees, supervisees, colleagues, and business associates (in the broadest sense). Others are not so lucky, and closing a practice may not be the result of a voluntary retirement, but rather, the result of an emergency or some unforeseen circumstance or occurrence requiring closure of the practice on short notice.

A closure on short notice can clearly make the process more complicated and frenetic. In the case of a sudden and unexpected death of the therapist or counselor, a spouse (perhaps as executor, trustee, or administrator) may have some responsibility for closing the psychotherapy or counseling practice. In such a case, the spouse will likely need to consult with an attorney, and maybe, a mental health practitioner - perhaps a colleague of the deceased. A professional will can help to ease the burden in such situations. Whatever the circumstance, it is important for therapists, counselors, and others to keep some very basic information in mind when closing a practice. This article addresses those basics. As an aside, and perhaps the subject of another article, when a therapist or counselor sells his or her practice, issues may arise that bear a striking resemblance to some of the issues discussed in this article.

It is important to remember that each state may address one or more aspects of closing a practice in its laws or regulations. For example, in some states it may be mandatory for a therapist to publish a notice in a newspaper of general circulation regarding his or her retirement from practice and the present/future location of patient records. Such a law may specify the procedural particulars for the

publication as well as the substantive content of the notice. Additionally, the ethical standards of one or more professional associations may have relevance to certain aspects of closing a practice. For example, ethical standards of most mental health professions contain provisions regarding termination (and abandonment) of the therapist-patient relationship. Thus, once the decision is made to close a practice, the practitioner must determine what state laws, regulations, or ethical standards (or guidelines) may require or suggest.

A major concern to be addressed when closing a practice is the termination of the multiple therapist-patient relationships - in an appropriate manner. This is critical because during the time that the therapist-patient relationship exists, the therapist has certain duties and responsibilities with respect to the patient. Once a proper termination occurs, the therapist is no longer responsible for the patient's care. When closing a practice is pre-planned, as in a voluntary retirement from practice, the termination process is usually unremarkable. Patients can be advised well in advance of the actual retirement, giving them time to find another therapist (with an appropriate referral from the retiring therapist) if their course of therapy has not already ended. Practitioners should be mindful of the fact that after a certain date, they should not be starting professional relationships with new clients.

With respect to existing clients, it is usually best to first raise the fact of an impending closure of the practice and the need for termination and referral (if necessary) in a therapy or counseling session with each client (with appropriate documentation in the treatment records). If deemed necessary or appropriate, this can be followed up with a confirming, personalized letter to the client. With respect to the timing of the in-session notification of the client, practitioners must use their best professional judgment, unless a law, regulation, ethical standard, or recommended guideline specifies a time frame. Each circumstance is different and professional judgments differ. While a longer time period may be appropriate for some (e.g., six months' notice may be appropriate for certain long-term patients), I have found that a period between sixty and ninety days prior notice seems reasonable to most therapists who have consulted with me on this issue. Circumstances may necessitate a shorter notice period.

During the process of notifying the clients of the closing of the practice and the need to terminate the relationship, the therapist or counselor will also need to inform clients about the treatment records - for example, what will be done with the records and where they will be kept. The location of records is of critical importance when closing a practice, both to existing patients and to former patients. With existing patients, the practitioner can personally inform the patient about accessing the records after the practice is closed (documenting the conversation in the records) and can, if desired, confirm that conversation in a letter.

As indicated above, some states have enacted laws that require retiring therapists (and others who are closing their practices for reasons other than retirement) to publish a notice in a newspaper of general circulation. The primary purposes of the publication are to inform former patients of the fact of the closing of the practice and the future location of their treatment records. Publication is intended to provide "constructive notice" to those former patients who do not see it, and provides actual notice to those who do read it. If a former patient who has not seen the published notice is trying to locate a

practitioner who has closed his or her practice, the patient may contact the licensing board to find out the practitioner's current address – assuming that the practitioner has kept the licensing board informed – as is typically required by law or regulation.

Even if not required, practitioners may want to arrange for publication of such a notice and to explain therein how and where records can be accessed. Some may prefer to send a letter (return receipt requested) so that there is proof that the former patient received actual notice regarding the whereabouts and accessibility of his or her records. Publication content, as with letters written to present or former patients, must be carefully drafted. Questions arise concerning the appropriateness or necessity of sending letters to those former patients who were “discharged” many years earlier, many of whom may be difficult to locate. If the records of the patient have already been destroyed because they are old enough to be destroyed according to state law or practice, there would seem to be no compelling reason to send a letter (unless the law or an ethical standard dictates otherwise). Secure maintenance, storage, and destruction of patient or client records are important, and compliance with applicable state law or ethical standards is, of course, expected (including applicable requirements under HIPAA – for covered providers).

There are other matters to think about when closing a practice. For example, questions are asked about maintaining or canceling malpractice insurance. I have always leaned and counseled against letting the policy lapse or canceling the policy until a considerable amount of time following retirement has passed, even when the practitioner has an occurrence-based policy. I have encountered situations where the therapist retired or closed his or her practice, but shortly after the retirement and following cancellation of the malpractice policy, the therapist decided to see someone in therapy because of some unexpected situation or emergency. Performing services at a time when the practitioner has no professional liability insurance is risky to one's personal assets! Those with a claims-made professional liability policy must take special care not to allow their coverage to lapse upon the closure of the practice, and may need to purchase a “tail.”

Thought should also be given to notification of those who are not patients. There may be colleagues, referral sources, supervisees, or business associates (individuals, corporations and other business entities) that the therapist should notify. If a practitioner is on insurance panels, he or she should make sure that the insurer is informed in a timely way, and according to the terms of the contract, as to when no further referrals or removal from the panel is desired. Additionally, if the therapist or counselor conducts business under a fictitious business name, he or she may want to (or may be required to) file a statement of abandonment of use of the fictitious business name when closing his or her practice. If the practitioner rents or leases space, notification to the landlord, as per the requirements of the lease or rental agreement, is another necessity. Another consideration involves the status of one's license – that is, will the licensee request (if available) to place the license on inactive or some other status, or keep the license active for some period of time – just in case!