What will happen to your clients and their files if you unexpectedly become incapacitated or die?

The death or incapacitation of a practising psychologist, particularly if it is unexpected, can have many legal, ethical and personal implications. If you engage in independent private practice, you should consider contingency planning for your practice to ensure the welfare of your clients. Amongst other things, contingency planning can cover how your business is to be sold, transferred or closed.

The details of your practice contingency plans should be incorporated into your Will, in order to ensure that it has legal effect in the event of your death. A separate document outlining your practice contingency plans is not the same thing as a Will and does not have the same legal standing as a Will. Hence, you should seek independent legal advice regarding your contingency planning arrangements being incorporated in your Will.

An Executor appointed for your Will is responsible for taking care of all of your Estate, including attending to your professional obligations such as notifying clients and securing client files. Unless your Executor is a psychologist they may not be well placed to undertake this task. Including details in your Will about contingency plans for your practice will allow you to state how you want the sale, closure or transfer of your practice to be managed in the event of your death. However, you should be aware that there may be certain legal obligations on Executors of a Will regarding how to deal with the practice of a health service provider, so you should ensure that you discuss these requirements with your Solicitor, so that they align with your practice contingency planning.

You should also seek independent legal advice about how to give legal effect to your practice contingency plans in the event of your incapacitation.

The idea is that your practice contingency plans will be a guide to others in how to manage your practice in the event of your death or incapacitation. Having contingency plans for your practice can include things such as how to find a list of your active clients and their contact details in order to cancel appointments and who is to identify and manage your client’s ongoing needs, including access to their health information in their psychology file.

Contingency plans for your practice could consider including the following:

- The appointment of a professional nominee: A professional nominee can assist your Executor by managing your professional and ethical obligations to your clients and other matters related to your practice. It is recommended that where possible, you choose a psychologist who will have an understanding of the requirements and identify one or two appropriate back-up people in case your professional nominee is not available.

- Office information and security arrangements: The full address of all the places where you practice should be included, along with details of security codes and where keys can be found to access the office and filing cabinets. Information about an appointment book, diary or computerised appointment system should be noted, including any passwords for accessing email, voicemail and computer information. Details of how clients contact you (e.g., email, answering machine or service, mobile phone) should also be included so that your professional nominee can access them.

- Location of client records and contact details: You should identify the location of all client files (active and closed), and files that have been transferred for storage or have been destroyed. All inactive files should clearly indicate the last date of contact to enable determination of when they can be destroyed according to professional and legal obligations. This will ensure that previous clients can track the location of their file and enable your professional nominee to arrange for the appropriate storage or disposal of files at the required time.

- Instructions for notifying clients and processes for dealing with their health information: You will need to decide how you would like your clients to be notified about your death or incapacitation and whether you want this to be restricted to current clients or to include those who have recently finished treatment. You can direct your professional nominee to notify your clients in a number of ways including contacting them individually, placing a notice in a local paper, placing an announcement on the answering machine, or sending a letter to each client. Clients should be notified in a way that respects their right to confidentiality.
You will also need to consider how your client’s health information on their files is to be dealt with. Particular legal requirements will impact these arrangements, such as requirements to publish in newspapers about the sale, transfer or closure of a business, the manner in which you propose to deal with client’s health information held by your practice and what steps need to be taken to notify clients. All of these matters should be discussed this with your lawyer.

• A list of organisations or person to be informed. For example, Registration Board, indemnity insurer, membership organisations, referring practitioners and accountant.

Some more tips:
• Legal advice: You should consider consulting your lawyer to ensure that your Will accurately reflects your practice contingency plans. A lawyer can advise whether your contingency plans are likely to serve their purpose and ensure that the arrangements do not contain anything that may be potentially problematic. A lawyer can also advise on the most appropriate way for you to document how your professional nominee is to be compensated for assisting your Executor.
• Meet with your professional nominee: A meeting should be held with your professional nominee to review the practice contingency plans contained in your Will and to ensure their agreement to the role.

Enquiries regarding professional and ethical matters can be directed to the APS Professional Advisory Service by phoning the National Office on 1800 333 497 or 8662 3300 (if calling from Melbourne), or emailing professionaladvisory@psychology.org.au.

Developing a Practice Contingency Plan: Checklist

Use this checklist to ensure you have covered the key aspects of a practice contingency plan.

☐ Included the name of your professional nominee(s) and their contact details
   In deciding on an appropriate nominee consider their knowledge of the ethical and legal issues regarding storage of psychology records, their ability to sensitively communicate with clients and willingness to undertake the task.

☐ Outlined details of the specific agreement made with the professional nominee(s)
   For example, whether financial reimbursement will occur or whether activities are pro bono.

☐ Detailed how your nominee should access the practice (e.g., who has keys)
   If you work independently it will generally be your executor or professional nominee who has a copy of any keys or security passes for access to your practice. If you work within a larger practice, it may be the principal of the practice or another psychologist within it who is made aware of the process for management of files.

☐ Provided access to security passwords
   This includes computer passwords and passwords required for building access.

☐ Outlined a process for accessing your current client list and scheduled appointments
   For example, the location of your diary, electronic calendar, or instructions on accessing a practice software program.

☐ Provided instructions for how you would like clients to be contacted
   For example, by phone, by mail, or a notice in the newspaper

☐ Included a list of organisations or persons to be informed
   For example, Registration Board, indemnity insurer, membership organisations, referring practitioners, accountant, and lawyer

☐ Included your Practice Contingency Plan as part of your Will