

Arkansas Psychologists' Legal and Ethical Obligations in Regard to Emergency and Retirement Planning

Introduction

For psychologists in private practice, therapeutic work is grounded in trust and continuity. But sudden incapacity, death, or retirement can disrupt that trust and pose serious legal and ethical challenges. In Arkansas, licensed psychologists are subject to both state regulations and professional ethical codes that underscore the need for proactive planning. In other words, in Arkansas, proactive planning is not just a "best practice," it is a regulatory and ethical necessity.

Why Planning for the Unexpected Is Essential

Legal and Ethical Responsibilities in Arkansas

Both the APA Ethics Code (Standard 3.12), which is adopted by the Arkansas Psychology Board (APB) Rule 16.1, and state statutes require psychologists to prepare for unexpected practice interruptions. Failing to plan can lead to "patient abandonment," potentially re-traumatizing vulnerable clients and exposing your estate to legal liability. APB specifically requires psychologists to follow the APA Ethics code which states that psychologists must "make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as illness, death, unavailability, relocation, or retirement. HIPAA further emphasize the importance of safeguarding patient confidentiality and ensuring appropriate access to records.

To comply with these responsibilities, psychologists must:

- Appoint someone who can promptly access and manage both physical and electronic records.
- Retain records for the required period.
- Maintain confidentiality and HIPAA compliance.
- Fulfill ethical and legal duties regarding client notification and transitions of care.

Without written instructions (e.g., in a **Professional Will**), an executor may be unable to fulfill these duties, creating risks for clients, families, and the estate.

The Role of a Professional Will

A **Professional Will** is a formal document that outlines how a psychologist's practice should be handled in the event of death or incapacity. It typically includes:

- **Practice Executor:** The person responsible for closing or managing the practice.
- **Patient Notification:** Outlines how clients will be notified and referred.
- **Continuity of Care:** Lists referral resources and steps to support care transitions.
- **Record Access:** Provides passwords, encryption keys, and storage details.
- **Closure Logistics:** Includes instructions for handling billing, insurance, office leases, and licensing bodies.

Unfortunately, many Professional Wills are overly vague. Without concrete details like login credentials and notification templates, even a well-meaning executor may be unable to carry out key duties.

Naming a Practice Executor in Arkansas

Arkansas psychologists (active and retiring) should name a Practice Executor, in order to:

- Ensure record retention and patient notification obligations are met.
- Prevent confusion or inaction among family members or staff.
- Protect clients by facilitating timely transitions and avoiding lapses in care.

If no such designation is made, it may fall to family members or the estate executor, who often lack the clinical or legal knowledge to fulfill these responsibilities.

Executor Responsibilities in Arkansas

A designated Practice Executor should be prepared to:

- **Secure and Catalog Records:** Maintain HIPAA compliance and follow ABP record retention timelines.
- **Retain Records:** For at least 5 years from last contact for adults; for minors, until the patient is 18 plus 3 additional years. (Note that Arkansas Medical Society and many liability carriers recommend a more conservative 10-year total retention period to protect against delayed malpractice claims.)
- **Notify Clients:** Issue appropriate client notifications (via email, phone, or mail), and provide information on how to access records or obtain referrals.
- **Assist in Continuity of Care:** Facilitate care transitions and respond to incoming requests.

- **Document All Actions:** Keep detailed records of all communications and disclosures.
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Obligations for Retiring Psychologists in Arkansas

Retirement does not eliminate a psychologist's legal and ethical responsibilities. In fact, retiring clinicians are responsible for retaining records post-retirement in accordance with Arkansas code (i.e., 5 years post-termination for adults and until 21 for minors).

As such, retiring psychologists must go one of two routes

1. Hand over records to a Practice Executor, and inform clients about this arrangement and how to contact the Executor.
2. Retain client records and have a Professional Will that names an executor who would take possession of records in the event of death/incapacitation during the retention period.

Retiring without making these arrangements can leave former clients without access to vital documentation, place the psychologist at legal risk, and potentially violate ethical duties of care and confidentiality.

Traditional, Legal, and Professionalized Planning Approaches Online Templates

Pros: Low cost and accessible.

Cons: Often omit critical elements, are not tailored to clinical or legal realities, and may not comply with Arkansas record-handling or notification rules.

Using an Attorney

Pros: Legal precision tailored to Arkansas law. Provides credibility in legal proceedings.

Cons: Attorneys may lack clinical expertise. Hourly rates are high (\$300-\$600/hour), and total costs may reach thousands. Legal documents may still omit essential details like access credentials or care transition procedures.

Naming a Colleague as Executor

Pros: No yearly costs. Familiarity with clinical issues.

Cons: Colleague may be emotionally impacted by the psychologist's death. Few clinicians have the time or training to execute all tasks (which may require 40-80+ hours). If paid, fees may reach \$10,000-\$20,000+. Delays or mistakes can result in patient harm or legal exposure.

Professionalized Planning Model

Pros: Expert Collaboration (combines legal, clinical, and administrative expertise); Professional

Executor (ready, impartial, experienced, and with unlimited time/resources), predictable Costs (often structured as an annual retainer, with no large expense for executor services); Protects Family and Patients: Reduces emotional and logistical burden, ensures continuity of care, and minimizes risk of liability)
Cons: Annual retainer cost

Take Action Today

For psychologists in Arkansas, proactive planning is not only a professional best practice—it is a legal and ethical necessity.

- **If you already have a Professional Will and Executor:** Use a **checklist** (such as [this one](#)) to ensure the Will contains all the specifics that would be necessary for an executor to execute the Will according to your wishes. Also, be sure that you have chosen an Executor who has the time, expertise, and emotional distance to fully execute your Professional Will
- **If you need to create a Professional Will:** Consider the advantages and disadvantages of the options described above.
- **If you are retiring,** consider whether you want to continue to bear the responsibility for maintaining records during the retention period and handing record requests (in which case you should create a Professional Will that names an Executor, in case of your incapacitation/death during the record retention period) or whether you want to transfer responsibilities now (in which case you should engage an Practice Executor)
- Please note that ArPA has determined that [TheraClosure](#) offers a comprehensive solution to the challenges inherent in creating a Professional Will and identifying a Practice Executor. As such, we have partnered with them and arranged for a substantial discount for ArPA members (see [ArPA Member Portal](#)).
- Whatever you decide, **take action before a crisis occurs.** Remember that planning for the unexpected is not just about compliance; it's an act of care.

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