Closing a Psychotherapy Practice: Further Considerations

Michael Griffin, JD, Staff Attorney

The Therapist
March/April 2010

Over the course of his or her career, a therapist in private practice is likely to invest considerable time and energy developing and maintaining his or her business. It is equally likely that the same therapist will not contemplate the closure of his or her practice until it becomes absolutely necessary. Although that is understandable, the subject is ultimately, unavoidable: Every therapist who is in private practice will eventually discontinue his or her psychotherapy practice. It’s really a matter of when and why.

In this issue of The Therapist, attorney Richard Leslie discussed several important legal and ethical issues that are associated with closing a psychotherapy practice. This article takes a closer look at some of those issues and discusses various options that a therapist should be aware of when closing his or her practice.

The information that is discussed in this article is generally relevant to closing a practice, but the particular issues that a therapist may encounter will vary, depending upon his or her circumstances.

For example, a therapist may wish to close his or her practice in order to pursue a job or career change, or, an unforeseen event may require him or her to suddenly stop practicing. For the therapist who is approaching his or her retirement or who intends to stop practicing in the near future, the information that is discussed in this article should be of immediate interest.

Notifying Patients of the Closure

When a therapist decides to close his or her psychotherapy practice, he or she must plan for the appropriate termination of each of his or her psychotherapist-patient relationships. Because termination is a part of the therapeutic process, the amount of time that is necessary and/or appropriate for termination will vary from patient to patient. Accordingly, the amount of notice that should be provided to a patient depends on the needs of that patient and the clinical judgment of his or her therapist. As Richard Leslie mentioned, sixty to ninety days advance notice is considered by many therapists to be reasonable, (if it is possible to have that amount of time) but some patients may require much longer, such as those who are in long-term treatment.

A therapist has to decide how far in advance that he or she will provide notice to his or her patients regarding the closure of the practice and whether it should be communicated verbally or in writing. Although no single method or procedure is equally suited to all therapists and/or to all patients, it is not unusual for a therapist to simply inform every patient of his or her plans during the same approximate period of time. A therapist may also provide written information to his or her patients, such as a personal letter that confirms the therapist’s communications with the patient regarding termination. In view of the fact that termination can be an extremely sensitive and intense experience for some patients, it would be unwise to provide any written information about the therapist’s plans to patients until he or she has had the opportunity to speak with each of them about the matter. In fact, when first discussing these issues, a therapist may consider asking his or her patients to refrain from discussing the information with other patients for a week or two, in order to minimize the likelihood that a patient will hear the news from another patient, rather than from the therapist him or herself.

A therapist’s style of doing therapy and the overall composition of his or her caseload are relevant to these issues. For example, a therapist who generally provides brief, supportive therapy to high-functioning adults will probably experience an uneventful termination process with most of his or her patients. By comparison, a therapist who generally provides long-term, intensive psychotherapy to his or her patients and who specializes in the treatment of severe psychological trauma is much more likely to face a complex and demanding termination process.
Generally speaking, therapists have a lot of factors to consider during a patient’s termination. Such factors include, but are not limited to: A patients’ need for, and interest in, continued psychotherapy; the specific nature of a patients’ problems, including his or her diagnosis; the availability of appropriate treatment resources for a patient; a patients’ ability to access resources for his or her continued treatment; the relevant experiences in a patients’ history, such as his or her experience with prior separations and losses; and, the degree of social support that is available to a patient. The implication here is that a therapist should allow plenty of time for termination, whenever possible, in order to afford him or her a reasonable opportunity to address the multiplicity of issues that arise during the termination process.

Should Former Patients Be Contacted?
As a general rule, it is neither realistic, nor advisable, for a therapist to attempt to notify his or her former patients. There are several reasons for this, including the risk of an inadvertent breach of a patient’s confidentiality (e.g., a family member becomes aware of the fact that someone was a former psychotherapy patient). Or, an individual may simply feel unnerved by an unsolicited contact from his or her former therapist. This is not to say that there may never be a time where a therapist may determine that it would be appropriate to inform a former patient about the planned closure of the practice. An example may be a patient who participated with his or her therapist in multiple treatment episodes over the course of many years and his or her therapist believes that the patient would benefit if he or she were informed of the therapist’s plans.

Continuing Care Issues
When a therapist terminates his or her relationship with a patient who is in need of continued therapy, it is common practice to provide the patient with a referral. However, a patient may be resistant to the idea of “starting over” with a new therapist, or he or she may decline the therapist’s offer to provide him or her with a referral. Providing the names of three other therapists is customary, but isn’t required. A patient may have a special need, such as the need for a therapist with special knowledge or training, or who would be willing to accept a reduced fee, or payment from a particular insurance plan, etc. In some instances, a therapist may decide to offer a list of community resources to a patient for his or her future reference. A therapist should remember to document any recommendations or referral assistance that he or she may have provided to a patient.

Relevant Ethical Standards
The ethical standards that are provided by various professional associations are a significant source of information and guidance to therapists concerning termination of treatment. The following selected standards from the CAMFT Ethical Standards for Marriage and Family Therapists, the NASW Code of Ethics, the AAMFT Code of Ethics, and the APA Ethical Principles of Psychologists and Code of Conduct address the issues of treatment interruption, termination of treatment and patient abandonment:

CAMFT Ethical Standards for Marriage and Family Therapists
1. Treatment Disruption: Marriage and family therapists are aware of their professional and clinical responsibilities to provide consistent care to patients and maintain practices and procedures that assure undisrupted care. Such practices and procedures may include, but are not limited to, providing contact information and specified procedures in case of emergency or therapist absence, conducting appropriate terminations, and providing for a professional will.

2. Termination: Marriage and family therapists use sound clinical judgment when terminating therapeutic relationships and do so in an appropriate manner. Reasons for termination may include, but are not limited to, the patient is not benefiting from treatment; continuing treatment is not clinically appropriate; the therapist is unable to provide treatment due to the therapist’s incapacity or extended absence, or in order to avoid an ethical conflict or problem.

3. Abandonment: Marriage and family therapists do not abandon or neglect patients in treatment. If a therapist is unable or unwilling to continue to provide professional services, the therapist will assist the patient in making clinically appropriate arrangements for continuation of treatment.

NASW Code of Ethics
1. Interruption of Services: Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death.

2. Termination of Services: (a) Social workers should terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients’ needs or
interests. (b) Social workers should take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary. (c) Social workers in fee for service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client. (d) Social workers should not terminate services to pursue a social, financial, or sexual relationship with a client. (e) Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients’ needs and preferences. (f) Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.9

**AAMFT Code of Ethics**

1. Marriage and family therapists assist persons in obtaining other therapeutic services if the therapist is unable or unwilling, for appropriate reasons, to provide professional help.10

2. Marriage and family therapists do not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment. 11

**APA Ethical Principles of Psychologists and Code of Conduct**

1. **Interruption of Psychological Services:** Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist’s illness, death, unavailability, relocation, or retirement or by the client’s/patient’s relocation or financial limitations.12

2. **Terminating Therapy:** (c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pre-termination counseling and suggest alternative service providers as appropriate.13

**Colleagues and Supervisees**

As a professional courtesy, a therapist may inform his or her professional colleagues about the closure of his or her practice, as well as referral networks and other organizations (such as clinics or hospitals, etc.) that have referred patients to him or her in the past. It is important to maintain positive relationships with colleagues, regardless of the circumstances. The fact that a therapist is closing his or her practice does not necessarily mean that he or she may not ultimately interact with many of the same colleagues, in other contexts.

A supervisor should inquire about the termination plans for each of his or her intern’s patients in order to provide him or her with appropriate guidance regarding such issues. If a therapist is supervising an intern, he or she is also required to provide him or her with at least one week’s prior written notice of the fact that he or she does not intend to sign for any further hours of experience.14

**Insurance/Managed Care Panels**

It is important for a therapist to review his or her contracts with insurance and/or managed care companies, and with any referral networks, in order to ensure that he or she complies with the terms of such contracts and that such entities are informed of the practice closure.

**Rental/Lease Agreements**

Many therapists who are in private practice have entered into rental or lease agreements for the use of professional offices. A therapist who has entered into such an agreement will therefore need to notify his or her landlord in a manner that is consistent with the terms and conditions of the rental or lease agreement. It is advisable to review the terms of any such agreements well in advance of the planned closure date. Assuming that a therapist is at the end of his or her rental agreement or lease, the process should be uneventful. However, if he or she is a co-tenant with other individuals and the terms of the lease or rental agreement have not been fully satisfied by a therapist at the time of his or her departure, consultation with an attorney would be appropriate.
**Timing issues**

Although it is generally advisable for a therapist to decide upon a cut-off date for the acceptance of any new patients, the timing of such a cut-off date is a matter of therapist preference. A therapist who provides short-term treatment may find it reasonable and appropriate to accept new patients up to a point in time that differs from a therapist who has another style of doing therapy and/or a different theoretical orientation.

It is a good idea to avoid taking-on any new patients who, in the therapist’s opinion, are likely to require treatment for a period of time that is beyond the anticipated date of closure. When a prospective patient calls, a therapist may attempt to determine whether treatment may be completed with that patient within a specific time frame, but it is not always possible to foresee what he or she may need. Where there is some uncertainty about the advisability of beginning therapy with a patient, it is probably best to err on the side of caution and provide him or her with an appropriate referral.

**Malpractice Insurance**

It would be risky business to provide therapy to someone, even for a brief period of time, without the protection that is provided by professional liability insurance. Consequently, every therapist should know what the renewal deadline is for his or her malpractice insurance policy. In addition, a therapist should know whether or not he or she has an “Occurrence” or “Claims-Made” malpractice policy. An Occurrence policy provides coverage for an act that occurred during the time that policy was active, regardless of whether coverage is currently in place. In comparison, “Claims Made” policies provide coverage only during the time that the policy is active, unless the insured purchases extended “tail” coverage which allows him or her to report a claim after the policy has ended, for acts that took place during the time that the policy was in force.

Even when a therapist is closing his or her practice, it is a good idea to keep his or her malpractice policy active, at least for awhile. In his article, Richard Leslie advised that it would be wise for a therapist to maintain his or her malpractice insurance policy for a considerable period of time after he or she stops practicing, in the event that he or she decides to resume seeing patients at some point, or if he or she wants to offer help on an emergency basis.

**License Renewal Issues**

A therapist may continue to renew his or her license in an active status, regardless of whether he or she is currently practicing. By renewing his or her license in an active status, the therapist is legally permitted to practice, but he or she is also required to complete the mandatory number of continuing education hours during every renewal period. A therapist also has the choice of renewing his or her license as “inactive” by simply checking the appropriate box on the license renewal form that is sent to him or her by the Board of Behavioral Sciences. A therapist is not legally permitted to practice with an inactive license, but he or she is also not required to complete any continuing education hours while his or her license is inactive. A therapist can easily re-activate an inactive license by paying the appropriate filing fees and completing the number of continuing education hours that would have been required in order to maintain the license in an active status. Because an inactive license can be easily re-activated, it may be preferable for many therapists as a choice, compared to the alternative of permanently surrendering his or her license or allowing it to lapse.

**Fictitious Business Names**

In order to practice under a fictitious business name (also known as a “DBA”) a therapist has to apply to the relevant county clerk’s office and follow a legally defined procedure in order to use the particular name. Once it is obtained in this manner, the fictitious business name will expire after five years unless renewed by the owner. When a therapist stops practicing under a fictitious business name that was filed in the previous five years, the Business and Professions Code requires him or her to file a statement of abandonment of use of the name. Such a statement is executed in the same manner as a fictitious business statement. It must be filed with the county clerk of the county in which the business name statement was originally filed and published in the same manner as the original statement. An affidavit showing such publication must be filed with the county clerk after completion of the publication that states: the name being abandoned and the street address of the principal place of business; the date on which the fictitious business name statement, which pertains to the business name being abandoned was filed, the file number, and the county where it was filed; the name(s) of the business owner(s), and the name and address of the corporation, if applicable.

**Professional Corporations**

When a therapist closes a practice that was operated as a professional corporation, he or she will need to wind up and dissolve the corporate entity in a manner that is consistent with the provisions described in the Corporations Code. The process to be followed in a given case will vary, depending upon the number of directors/shareholders and the nature of the corporate assets and debts, etc. After the corporation has been completely dissolved, a
Handling and Storing Patient Records
It is important for therapists to ensure that all treatment records are safely and securely stored. Section 56.101 of the Civil Code states that all health care providers who create, maintain, preserve, store, abandon, destroy or dispose of a patient’s record, must do so in a manner that preserves the confidentiality of the information contained in the record. In addition, therapists who are covered entities under HIPAA, who intend to electronically store protected health information, must comply with the Security Standards that are provided by HIPAA.

Records Retention Policies
Private practitioners should also have a policy for the retention of patient records. It may come as a surprise to some therapists to learn that there is nothing in the law for LMFTs and LCSWs that specifies a period of time that records must be maintained. There are some sections of law, however, that provide a reasonable point of reference. For example, Section 2929 of the Business and Professions Code requires psychologists to retain a patient’s record for a minimum of seven years from the patient’s discharge date. This section of law also states that psychologists must retain the records of an unemancipated minor for at least one year after the minor’s eighteenth birthday and in any case, not less than seven years. Health and Safety Code 123145 imposes the same records’ retention timelines upon specified licensed health facilities and further states that such facilities must retain patient records for a minimum of seven years, and one year from the minor’s eighteenth birthday, if the facility ceases operation. Although therapists are not required to follow these requirements, it is fairly common for therapists to retain patient records for a period of seven years from the patient’s termination.

Regardless of a therapist’s preference on this issue, it is important that he or she establish and consistently follow a clear policy for records retention in order to avoid any inference or accusation that he or she may have destroyed a record in order to avoid responding to a subpoena or to a patient’s request for his or her records. It is worth noting that there is a three year statute of limitations for the commencement of a civil action against a therapist for alleged professional negligence and a seven year statute of limitations for the enforcement of a disciplinary action by the Board of Behavioral Sciences or ten years for an allegation of inappropriate sexual conduct. In the event that an accusation of wrongdoing is levied against a therapist, a patient’s treatment record is likely to contain documentation that is relevant to his or her defense.

Patient Access to Records
Multiple laws and ethical standards pertain to a patient’s rights of access to his or her treatment records. Section 123110 of the Health and Safety Code provides that any adult patient, patient representative, or any minor patient who is authorized by law to consent to his or her treatment, is entitled to inspect his or her records within five working days after making a written request to his or her health care provider, and has the right to receive a copy of his or her record within fifteen days after providing such a request. For a therapist who is a “covered entity” under HIPAA, it is also necessary to comply with HIPAA’s Privacy Rule concerning the use and disclosure of a patient’s Protected Health Information.

The following selected standards from the CAMFT Ethical Standards for Marriage and Family Therapists, the NASW Code of Ethics, the AAMFT Code of Ethics, and the APA Ethical Principles of Psychologists and Code of Conduct address important ethical issues pertaining to handling patient records:

**CAMFT Ethical Standards for Marriage and Family Therapists**
1. Clinical Records: Marriage and family therapists create and maintain patient records, whether written, taped, computerized, or stored in any other medium, consistent with sound clinical practice.
2. Maintenance of Patient Records—Confidentiality: Marriage and family therapists store, transfer, transmit, and/or dispose of patient records in ways that protect confidentiality.
3. Employees—Confidentiality: Marriage and family therapists take appropriate steps to ensure, insofar as possible, that the confidentiality of patients is maintained by their employees, supervisees, assistants, and volunteers.

**NASW Code of Ethics**
1. Client Records: (d) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts.42

**AAMFT Code of Ethics**

1. Marriage and family therapists store, safeguard, and dispose of client records in ways that maintain confidentiality and in accord with applicable laws and professional standards.43
2. Subsequent to the therapist moving from the area, closing the practice, or upon the death of the therapist, a marriage and family therapist arranges for the storage, transfer, or disposal of client records in ways that maintain confidentiality and safeguard the welfare of clients.44

**APA Ethical Principles of Psychologists and Code of Conduct**

1. Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work: (c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice.45

**Professional Wills**

If a therapist becomes seriously ill or dies, his or her family is often confused and/or overwhelmed about whether or not to contact his or her patients, and how to handle numerous issues related to the therapy practice. By creating a professional will, a therapist is able to describe what he or she would like to occur in such circumstances.

In order to create a professional will, a therapist must ask him or herself: "If I die, what do I want to occur, and who do I want to take charge of such issues as: contacting my patients, colleagues, supervisees, and business partners; handling treatment records; informing insurance companies; and paying my bills? How a therapist answers such questions depends on numerous factors, such as the availability of a person or persons who would be capable and willing to carry out a therapist's wishes. Given the unique and sensitive nature of such tasks, it is critically important for a therapist to select the appropriate person(s) and to provide him or her with the information necessary to carry out his or her wishes.47

**Final Thoughts**

The fact that there are so many issues to consider related to the broad topic of closing a psychotherapy practice may alarm some therapists. Yet, in most circumstances, none of these issues should prove to be overly difficult or complex for a therapist to address. A plan can be constructed that will meet the particular needs of most therapists. Furthermore, unless a therapist is approaching his or her retirement or he or she plans to stop practicing in the immediate future, he or she has an opportunity to begin to think about and plan for most scenarios.

Michael Griffin, JD, is a Staff Attorney at CAMFT. He is available to answer members' questions regarding business, legal, and ethical issues.

**References**

2. Id.
3. Id.
4. There are numerous statutes, regulations and ethical standards which are applicable to the issues discussed in this article. The various laws and ethical standards cited are not intended to be an exhaustive list of every possible law and/or ethical standard which is applicable to the subject matter.
5. CAMFT Ethical Standards, Section 1.3
6. CAMFT Ethical Standards, Section 1.3.1
7. CAMFT Ethical Standards, Section 1.3.2
8. NASW Code of Ethics, Section 1.15
9. NASW Code of Ethics, Section 1.16
10. AAMFT Code of Ethics, Section 1.10
11. AAMFT Code of Ethics, Section 1.11
12. APA Ethical Principles of Psychologists and Code of Conduct, Section 3.12
13. APA Ethical Principles of Psychologists and Code of Conduct, Section 10.10
14. California Code of Regulations, Section 1833.1
17. Business and Professions Code, Section 4984.8
18. Id.
19. California Business and Professions Code, Section 17918
California Business and Professions Code, Section 17920
California Business and Professions Code, Section 17922
Id.
California Corporations Code, Section 1900., et.seq.
Id.
California Corporations Code, Section 1901.
California Civil Code, Section 56.101
45 CFR 164.304
California Health and Safety Code, Section 123145
California Business and Professions Code, Section 2929
California Health and Safety Code, Section 123145(a). This law applies to a variety of licensed health care entities, such as licensed clinics, skilled nursing facilities, intermediate care facilities, adult day health care facilities, community care facilities, residential care for the elderly and home health agencies.
California Code of Civil Procedure, Section 340.5
California Business and Professions Code, Sections 4982.05, 4990.32
California Health and Safety Code, Section 123110
45 CFR 164.304 The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
CAMFT Ethical Standards, Section 3.03
CAMFT Ethical Standards, Section 2.04
CAMFT Ethical Standards, Section 2.05
NASW Code of Ethics, Section 3.04
AAMFT Code of Ethics, Section 2.4
AAMFT Code of Ethics, Section 2.5
APA Ethical Principles of Psychologists and Code of Conduct, Section 6.02
Id.