

Warrington, J., & Barnett, J.E. (1998). **When a practice closes abruptly: Ethical Issues for Clinicians.** *The Maryland Psychologist*, 43 (6) 20-21.

### **Case Example**

Dr. Vera Trusting, a licensed psychologist with a specialty in treating patients with depression, works in a large, privately owned mental health clinic. She is unaware that the clinic owners have begun discussing possible dissolution of the practice due to financial difficulties. On one particularly demanding day, Dr. Trusting has addressed a number of patient crises and is feeling particularly satisfied as she leaves her office. She is greatly alarmed when she is met at the clinic's entrance by the owners, who inform her that the business has been closed as of that day; she is instructed to leave the building and not to return. When she asks about contacting her patients, she is told curtly not to worry about it and that it will be taken care of. Shocked, confused, and concerned, Dr. Trusting leaves the building, unsure of what actions she should take.

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Could this happen to you? Do you know what to do should it occur? Are you aware of the important steps psychologists must take in order to prevent adverse consequences should a practice close or fail? If you answered "No" to any of these questions, read on.

Most psychologists work diligently to provide patients with quality treatment services. Maryland psychologists typically strive to ensure that patients' needs are adequately addressed when patients leave treatment, as mandated by the Code of Ethics and Professional Conduct (COMAR, Title 10, 1992) as well as the APA Ethics Code (APA, 1992). Termination, whether initiated by the patient or psychologist, is addressed according to specific guidelines that ensure that each patient's treatment needs are met. Psychologists strive to protect the welfare of those they serve, regardless of how treatment is terminated. In fact, in the Code of Ethics and Professional Conduct, we are even required to terminate under certain circumstances such as when patients are not benefiting from treatment or when a dual relationship or impaired competency are present (Section .05, Client Welfare).

But what if the termination of treatment services has been forced upon both the psychologist and patient? This seemingly unlikely scenario can and does occur. A psychologist may be fired from a contractual position, a practice or clinic may close, or a psychologist's position may be discontinued. Those who work as employees or independent contractors for a practice or clinic have several ethical obligations to ensure that their patients' welfare is maintained when one of these unwelcome events occurs.

### **Preparing For A Forced Termination**

While several principles of the APA Ethics Code and Title 10 underlie the treatment of patients in the situation as described above, an overriding one is that psychologists do not abandon patients. Therefore, it is essential to plan in advance for such a scenario (Barnett, 1998). This focus on prevention is emphasized in the APA Ethics Code, which states that psychologists "make reasonable efforts to plan for facilitating care in the event that psychological services are interrupted," and also provide for "appropriate resolution of responsibility for patient or client care in the event that the employment or contractual relationship ends" (4.08, Interruption of Services).

In addressing these issues, the clinician's primary concern should be the welfare of patients. The APA Ethics Code (1992) stresses the obligation not to abandon patients and to avoid doing harm. It is important that treatment needs be discussed in advance with a patient and arrangements made before the therapeutic relationship abruptly ends. These actions will help in minimizing any interruptions in treatment and any potential for abandonment. If we wait until such a situation occurs, we may be ill-equipped to take the necessary immediate steps.

Psychologists are generally not trained to understand the ramifications of the nuances of an employment agreement. Hiring a legal professional to review all contracts before entering into a contractual agreement will likely prove to be very prudent in the long run. Consideration of such issues as record ownership and non-competition clauses should be discussed not only with potential employers, but with

legal counsel as well. While not a replacement for competent legal counsel, *The Psychologist's Legal Handbook* (1988) may serve as a valuable resource for clinicians in addressing these issues.

Also, all agreements reached with an employer should be in writing. Many psychologists enter into business relationships with no understanding of the need for written agreements (Callahan, 1989). They are necessary in order to avoid misunderstandings in the event of the closing of a practice or clinic. As Callahan states, “. . . *often rationality and practicality go out the window when it becomes necessary to terminate a professional relationship*” (p.22).

As for patient records, you may have no access to these records if the practice closes. While a practice must maintain those records in accordance with Maryland law, your patients may request copies of their treatment records to be sent to another therapist. Also, as part of your preparation for a situation in which you must abruptly leave a practice, be sure to maintain adequate liability insurance; patients can file suit against their therapists well after their treatment has ended (Freiberg, 1998).

### **If It Happens To You**

It is vital that you remain calm and stay focused on your patients' treatment needs. Consultation with colleagues, the MPA ethics committee, and the state licensing board are all important steps to take. Ongoing communication with owners of the practice may be necessary as well.

In addition, you must ensure that arrangements are made for adequate storage, retention, or disposal of patient records. As mentioned above, agreement on record ownership and access policies should be reached when you negotiate your employment contract with the practice. Typically, a clinician is specified as custodian of records in the event that a practice fails. That clinician may then make the necessary decisions regarding any action on patient records. Relevant state laws and regulations, along with the APA Ethics Code, should be consulted for guidance on record retention requirements. Care should be taken with all cases, especially those involving legal proceedings, as these records may be needed at a later date.

This can be an especially stressful time for clinicians. In emergency cases, time pressures may be paramount; a patient in crisis must be treated, though you are not personally able to continue providing treatment. Giving a patient a referral and considering your obligation met is not sufficient. Your role as a treatment provider exists until a patient is in treatment elsewhere.

To help guide in planning for the possibility of a forced termination the following suggestions are provided:

1. Seek legal advice before entering into any contractual arrangements. Get your employment arrangements in writing in the form of a contract that covers procedures related to possible closing or disbanding of a practice or your departure from the practice.
2. Keep a list of patients' phone numbers and addresses at a secure and separate site, such as a home office. This will allow you to contact your patients should your practice close abruptly.
3. Seek supervision or consultation with an experienced colleague. This process may be difficult for you emotionally, and you will need to take measures to ensure that your own issues do not affect your ongoing contacts with patients.
4. Do not abruptly terminate patients you have been seeing at the practice and then consider your responsibilities fulfilled. Merely informing a patient of termination without providing for alternatives for treatment and the opportunity to obtain them does not meet the standard of care of the mental health professions.
5. When referrals to other clinicians are needed, assist patients in their transition to a new provider. Providing several referral options is helpful. Take reasonable steps to facilitate the transfer. Sending a certified letter to each patient detailing treatment options and any arrangements agreed upon is important.

6. Be sure to document all discussions of termination issues, including any phone conversations with patients after the facility or practice has closed. Also, document any decisions made by the patient and your recommendations to the patient.
7. Remember your primary objectives in accordance with ethical standards: to protect the welfare of clients, to avoid doing harm, and to make sure treatment need of patients are met. Be aware, too, of any ethical and legal standards that may apply.

## References

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