

ETHICS UPDATE:

**FOR QUESTION REGARDING THE NEW REQUIREMENT TO
HAVE A RECORD TRANSFER PLAN OR OTHER QUESTIONS,
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New requirement to have a transfer plan

By David Kaplan

Counseling Today is publishing a monthly column focusing on new aspects of the revised ACA Code of Ethics (available online at www.counseling.org/ethics). American Counseling Association Chief Professional Officer David Kaplan conducted the following interview with ACA Ethics Code Revision Task Force members Harriet Glosoff and Rocco Cottone.

**Standard C.2.h.
Counselor Incapacitation or Termination of Practice**

"When counselors leave a practice, they follow a prepared plan for transfer of clients and files. Counselors prepare and disseminate to an identified colleague or 'records custodian' a plan for the transfer of clients and files in the case of their incapacitation, death or termination of practice."

David Kaplan: What was the genesis of the new ACA Code of Ethics standard for "Counselor Incapacitation or Termination of Practice"?

Harriet Glosoff: In our discussions about the new standard on safeguarding the confidentiality of a deceased client (B.3.f.), the Ethics Code Revision Task Force realized that the ACA Code of Ethics said nothing about the need to have a plan in place for assisting clients to transition to a new counselor or to obtain

their records if the counselor left the practice, became incapacitated or died.

Rocco Cottone: Right! We began to see this as a proactive issue - the importance of educating practitioners on the need to plan ahead for the day their practice ends.

HG: Even beginning counselors need to have a transfer plan. You may be young, healthy and starting a new practice, and the last thing on your mind is thinking about illness or death. But what if you get hit by a car and can't resume work for a month or more? Who will see your clients? There has to be a transfer plan in place to ensure that your clients have access to both counseling and their records during your period of incapacitation. This is important for all counselors, but it is especially critical in a private practice.

DK: What are some ways that you can see a client being harmed if a transfer plan is not in place when a counselor dies, becomes incapacitated or announces that he or she will shortly be moving to a different part of the country?

HG: The most obvious issue for me revolves around clients who are in the midst of counseling and need continued treatment - especially clients in a fragile state. Dealing with the fact that your counselor has died, become disabled or is leaving in the middle of treatment can be very traumatic. It means that the client has to start from the beginning with a new counselor. A counselor without a transfer plan adds to that trauma, stress and anxiety by the lack of a referral process. The client may have no idea who to turn to. Clients may also have no clue as to how a new counselor can obtain their notes and records.

RC: From a rehabilitation counseling perspective, a client's records can be critical for an application or reapplication for disability through a state agency, worker's compensation or Social Security. Having those records unavailable could cause much harm to a client.

DK: Are there any horror stories you know of?

RC: A former counselor in my community was in private practice and passed away. When she died, all of her private practice notes and files were thrown in the trash by her partner. The counselor had no transfer plan, and therefore had no means of communicating what should happen to those records.

The partner, who was a painter by trade, had to make the decision and just decided to pitch the notes. I spoke to him afterward and told him that he should have kept those records. His response was that he was not a counselor and therefore was not under any obligation to do so. Technically, he had no legal right to the records.

HG: There have also been examples of celebrities whose counseling records were released to the media when the counselors of the celebrities died.

DK: From the issues and examples you list, it sounds like the need to have a transfer plan ties into the ethical imperative that we must not abandon clients.

HG: Exactly! And it also relates to the issue of informed consent.

DK: My assumption is that the transfer plan needs to be incorporated into the informed consent process.

HG: Yes, it should. Standard A.2.b. ("Types of Information Needed") of the revised ethical code notes that the informed consent process should include information about the continuation of services upon the incapacitation or death of the counselor.

RC: Clients should be given the plan in writing so that they know whom to contact if the counselor suddenly becomes unavailable. Counselors can easily do this by incorporating a transfer plan into their written informed consent document and making sure that clients receive a copy of this document.

DK: Is there a specific format counselors should utilize for their transfer plan?

HG: There is no one particular format. The Ethics Code Revision Task Force felt that specifying a format would be overly prescriptive. A counselor just needs to make sure that the important points are covered.

DK: What are the important points to cover in a transfer plan?

RC: The plan needs to state what clients should do to access their records and facilitate continued services if the counselor becomes inaccessible through death, disability or change of location.

HG: This would include explicitly stating in your informed consent brochure who the custodian of your records will be and the complete contact information for that person. This custodian should then notify active clients upon receipt of the records.

DK: Should the plan also include staff?

HG: Yes. The administrative assistant, receptionist or another counselor within your practice should be informed about the plan so that he or she knows where to transfer the records. This colleague or staff member can also give out the custodian's contact information if clients have misplaced their copy of the informed consent brochure.

DK: For those in independent practice, what are the options for choosing a custodian?

RC: Ideally, it should be another mental health professional.

HG: The most logical person would be the colleague you use for backup or on-call purposes when you are away or otherwise unavailable.

DK: Would either a lawyer or a certified public accountant be acceptable as a records custodian?

HG: I would be more comfortable with a mental health professional or someone who is part of the practice and already has access to the records, such as the administrative assistant or receptionist.

RC: Using a professional counselor or other mental health professional as your records custodian speaks to the need for confidentiality. Standard B.6.h. ("Reasonable Precautions"), a related standard to the one we are discussing, states that "Counselors take reasonable precautions to protect client confidentiality in the event of the counselor's termination of practice, incapacity or death."

DK: Is a handshake agreement with your records custodian enough?

RC: No. Whoever the custodian is, the arrangement should be in writing. If it is only a verbal agreement, your estate may decide not to honor your wishes.

DK: Any final thoughts on this new standard of the ACA Code of Ethics?

HG: This standard is particularly germane to those who are thinking about the issue of retirement. Even if you retain your records after you retire, clients need to know how to reach you if they need their records. And even after retirement, you do need to designate a custodian in the event you die or become incapacitated.

RC: My final thought is that ACA members should know that the Ethics Code Revision Task Force took a proactive/educational approach rather than a punitive approach to this and all other sections of the revised Code of Ethics. Focusing on a transfer plan is all about preparing counselors to address unforeseen circumstances in a way that best serves their clients.

HG: Agreed. The new "Counselor Incapacitation or Termination of Practice" standard is offered in the spirit of preventing a sense of abandonment, protecting client welfare and preserving confidentiality as best as possible in a difficult situation.

Next month: Updates on the ethical use of technology in counseling.

Letters to the editor: ct@counseling.org