

WHAT SHOULD I DO WHEN I RETIRE?

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Introduction

In this article I will offer some suggestions about how a clinical counsellor can shut down his or her practice. I will presume the counsellor is self-employed, but some of my suggestions might also be useful for salaried counsellors.

Notify clients and others

The clinical counsellor planning retirement should notify clients well in advance of the actual retirement date. How far in advance will depend on the type of counselling services being provided and whether counselling usually span a short or a long period of time. Generally speaking, a three-month notice would be the minimum.

Clients should be notified in person, so that the counsellor can deal with any negative reactions. For former clients, a suitable worded letter should be mailed to the last known address. A notice in a local newspaper may also be helpful.

Referring organizations should also be notified, so they make alternative arrangements that would start after the counsellor retires.

What to say

A notice should:

- stated the date of planned retirement, and any factors that may extend that date into the future;
- explain what will happen to current clients (e.g. where they should go for counselling services after the counsellor has retired);
- name any contact person (e.g. the counsellor buying the practice);
- describe what will happen to the clinical records to ensure confidentiality, future access by clients, and their eventual disposal.

Notify the BCACC and the insurer

A retirement can result in a change in the counsellor's status to an inactive member of the Association. Counsellors should therefore be familiar with BCACC bylaw 12.

Giving the BCACC a contact address or phone number can allow the Association to act as a conduit for colleagues, former clients and third parties who want to contact the counsellor after retirement.

The counsellor should notify his or her insurance company about the pending retirement. It may be prudent for the counsellor to take out new insurance in case a claim is filed against the counsellor some time after retirement for an alleged negligent act that occurred before that date.

Dealing with clients

Arrangements should be made to refer current clients to new counsellors or them find a new counsellor by providing a list of those who may be able to help.

If the retirement involves selling the \ practice to another counsellor, current clients should be informed of the transfer and be provided with background information about the new counsellor. This may be specified in the sale/purchase agreement.

New clients should be informed asap, as some may want to see a new counsellor sooner, rather than switching after the counsellor retires.

The counsellor should also make sure that any follow-up consultation, outstanding evaluations or medical/legal reports, and results of tests, etc. will be reviewed and acted on by another counsellor.

Retention of clinical records

The BCACC code of ethical conduct and standards of clinical practice require counsellors to maintain the confidential nature of stored clinical records.

It would be wise for a retired counsellor to retain his or her clinical records for at least seven years from the date the client was last seen by the counsellor. Seven years is recommended, because that period covers the standard six year limitation period for most causes of action, plus an additional year between the date a statement of claim is filed and the date it must be served on the defendant.

Before disposing of a clinical record, however, the counsellor should first ascertain if the client in question is an adult. The law allows minors (those under age nineteen) to sue their health care providers for damages after they reach the age of majority if their parents have not already sued on their behalf.

Therefore, the seven year retention period would not start running until the minor's 19th birthday.

Finally, if the clinical records were generated pursuant to federal or provincial legislation (e.g. the *Workers' Compensation Act*), the counsellor should ascertain whether or not that legislation or an agency policy prescribes some particular method for retention and disposal of the records.

Disposal of clinical records

The BCACC code of ethical conduct and standards of clinical practice also require a counsellor to maintain the confidentiality of disposed records. This would include disposal after retirement.

The counsellor should give the clients the choice to have their clinical records sent to them, sent to another counsellor, or to have the records disposed of in a specified fashion. It may be impractical if not impossible for the counsellor to contact all past clients and ask them to choose one of these options. But this is a route the counsellor should consider before proceeding further, in particular if the counsellor is aware that some clients are seeing other practitioners.

The BCACC's practice standards can be enforced against any member, including an inactive member. But, even if the retired counsellor is no longer a member, the common law imposes a legal duty on retired counsellors that is similar to the Association's standard. Therefore, what a counsellor should do with clinical records on retirement is very important, whether or not the counsellor maintains his or her membership with the Association.

Disposal of clinical records may have been addressed in a counselling agreement that the client signed at the start of treatment, in which case the counsellor should be able to follow those arrangements. But the counsellor will most likely have to deal with record disposal after-the-fact.

A retiring counsellor can have another counsellor take ownership of the clinical records, which commonly happens when a counsellor sells a clinical practice to another counsellor. The transferring counsellor should make sure the receiving counsellor has agreed to take on all responsibility for security, client access and the eventual disposal of the records.

If the counsellor has determined that it will be necessary to dispose of his or her clinical records at the end of the applicable retention period(s), the counsellor should make arrangements for the safe storage and controlled access to those records until such time as they are to be destroyed.

There are companies that provide record storage and disposal services for health professions. Before signing the service contract, the counsellor should ensure that the company's contractual obligations meet or exceed the counsellor's ethical and legal duties. If something else goes wrong, the counsellor may not be able to hide behind the company's contract as a defense to any claim that aggrieved clients may file against the retired counsellor.

As for actual disposal, the counsellor should ensure the complete destruction of the clinical records.

Shredding and incineration are common ways of destroying clinical records. If the counsellor is not going to destroy the records him/herself, the counsellor should ensure the agent who will do so in a complete fashion.

If they are also not incinerated or otherwise destroyed, electronic records should be rendered unreadable by appropriate means. This should be by more than simple magnetic erasure, as there are programs that can recover all or part of such data.

Post script / Disclaimer

This column is intended to help clinical counsellors gain a better understanding of legal issues that are relevant to their practice. It is not meant to be a substitute for independent legal advice. If you have a particular concern about an issue that you are facing in your practice, you should seek specific advice from your lawyer. The BCACC cannot provide individual counsellors with legal advice and assumes no responsibility for the content of this column.

What other legal issues concern you?

If you have a practice question that you feel raises a legal issue that should be of concern to all counsellors, please mail that question and any background information in confidence to: The Counsellor's Counsel c/o the Victoria office.

CURRENT TO: April 2001