BREAKING UP IS HARD TO DO: TERMINATING YOUR RELATIONSHIP WITH A CLIENT

Ilene H. Ferenczy, Esq., CPC, APA

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Breaking Up Is Hard to Do: Terminating Your Relationship With a Client

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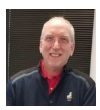

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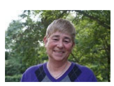

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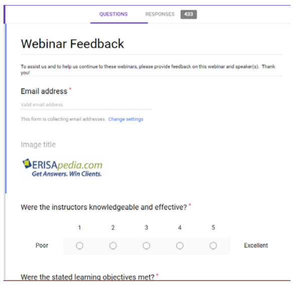
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Your Presenter Today

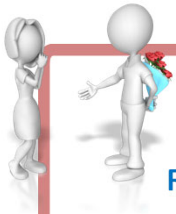
Ilene H. Ferenczy, JD, CPC, APA

5

Agenda

- The Zen of the Relationship … and its Ending
- The Key to a Good Ending Is a Good Beginning
- How to Act During the Relationship in a Way That Will Make the Ending More Graceful
- The Termination Process
- Other Considerations

6



The Zen of the Relationship … and its Ending

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Terminating Your Relationship With Your Client

- Commonly, this issue is given the least consideration of any part of your representation
  - "Get out, we're fired, you're fired, that's it, adios."
- But, this could truly be one of the times of highest potential liability
- Let's discuss the concerns, the goals you should have for the termination process, and the solutions to problems that can arise

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Why Is the Relationship Terminating?

A. The plan has terminated and has been paid out, so there is nothing more to administer.

B. The client has been purchased and the new owner has its own TPA.
   - Its cousin: the HR person (or CFO) has changed and the new person has his/her favorite TPA.

C. The client (or the TPA) is going out of business.

These three reasons do not implicate bad causation on anyone's part: they are just changed circumstances.

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Why Is the Relationship Terminating (cont'd)?

D. The client is going to a fully bundled approach.
E. The client is changing to a different TPA.
F. The TPA is firing the client.

These reasons, the most common, embody significant risk, because they mean that either the client or the TPA or both are unhappy.

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The Key to a Good Ending Is a Good Beginning

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The First Step of a Successful Termination: A Successful Initiation

- In the "infatuation" stage with a new client, we are rarely willing to talk about what happens on termination of the relationship
- However, significant liabilities can be avoided based on what we say at that stage of the process

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Things You Can Do at the Beginning to Make the End Easier

- Set expectations and meet them
  - A good service agreement will outline what you will do, what it will cost, what else you can do, and what those additional efforts will cost
  - By properly setting expectations, you help reduce the risk of disappointing the client
  - By properly disclosing fees and other compensation, you can help clients predict and control costs
  - By obligating a client to keep records, you lessen the burden on you at termination

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Things You Can Do at the Beginning to Make the End Easier (cont'd)

- Screen clients at the outset
  - Be particularly wary of takeover business
    - Takeover business is not bad business, but it is "broken hearted" business
  - Ask questions designed to ensure that you and your potential client are a good fit:
    - What services/expertise are desired?
    - What level of hand-holding is desired?
    - Why did the prior relationship terminate?
    - What kind of communication does the client prefer?
    - How much responsibility does the client want to take or offload?

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Things You Can Do at the Beginning to Make the End Easier (cont'd)

- Outline termination procedures and costs at the front end
  - Required by ERISA §408(b)(2) regulations to disclose fees that are charged on termination of contract
  - Providing the client (and the successor TPA) with expectations of how the termination process will go can:
    - Help things go smoothly
    - Ensure you get paid for what you do

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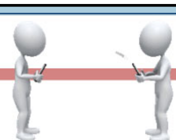
Things You Can Do at the Beginning to Make the End Easier (cont'd)

- How do you do all this?
  - Put it in your service agreement
    - Makes it binding and enforceable on all parties
    - Works like a prenuptial agreement to outline this stuff while emotions are calm
    - Makes the whole process professional

16



How to Act During the Relationship in a Way That Will Make the Ending More Graceful

17

Things to Do During the Relationship to Make the End Easier

- Provide good reports to the client
  - Give your client a good package of plan documents and encourage them to keep it all up to date
    - Confirm they actually sign stuff
  - If your valuation package to the client has all account information, the client may have everything it needs to give to your successor
    - If hard copy, bind it so that it all stays together
    - If computer copy, .pdf it so that it all stays together and accurate
  - The less the client needs you after the termination, the better

18

Stay Firm on What You Will and Will Not Do for Your Client

- Commonly, the more unhappy a client gets, the more the TPA bends over backwards to try to solve the problem
- But, if those efforts change the client's expectations, it is hard to go back to the status quo ante
  - The result is that the client continues to be disappointed … without you ever knowing what the expectations have become
- Be compassionate but stay firm to your agreement

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Don't Duck the Client

- As relationships deteriorate, it is common that people start avoiding client contact
- The result is commonly that the least able person is your spokesperson … a bad result
- Address the problem directly, and help the client decide to leave when the relationship cannot be repaired

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Get Help if it Is Available

- Get the referral source or other advisor to help you smooth out the rough edges, if possible
  - He/she can act as intermediary if there are communication problems
  - He/she can help the client understand its responsibilities and do what it needs to do
  - He/she can help provide the client with information and options
  - He/she may have a more personal relationship with the client that can come in handy
- But, it is important to know if the other provider has an agenda that is different from yours

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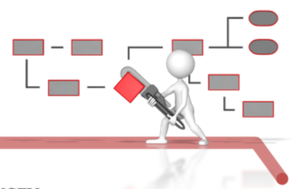
The Termination Process



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The Writing

- It is critical that the termination be confirmed in writing
  - Do this whether or not the client initiates and whether or not the client sent you a written notice

23

The Writing (cont'd)

- Your writing should include:
  - Confirmation of the termination
  - Confirmation of the effective date of the termination ("We will perform the administration through the plan year ending ______." or "We have been told to terminate all activities immediately, so we will be responsible for no further administrative work." or .. whatever)
  - What is pending
  - What you will charge for what you do (or refer to service agreement for that information)

24

Things to Do and Things Not to Do

- Do not admit fault to any wrongdoing
- Do charge for what you say in your service agreement you will charge for
- Do help the client make the transition … within a reasonable framework
- Do stay poised – be a class act, not a jackass
- Do not let your generosity be such that you lose money on a client who is leaving you anyway, unless you have a good reason to do so

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Whose Files Are They Anyway?

- Ethical Rules
  - Circular 230: your client is entitled to get "all records of the client that are necessary to comply with Federal tax obligations":
    - "Records of a client" include:
      - Whatever they or their other providers gave you that predates your engagement
      - Returns, claims for refund, work done by you that was presented to the client if needed to comply with current tax obligations
      - Does not include anything the client hasn't paid for
    - If fee dispute, can hold back records only if state law permits, and must provide things needed to be attached to a return

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Whose Files Are They Anyway (cont'd)?

- Ethical Rules
  - Actuaries need to be able to recreate what the prior actuary did, so need enough information to do that
  - NIPA: "I will deliver, on direction from my client, all documents and information essential to the administration of a plan, to a successor administrator."
  - ASPPA: when a client changes service providers, "…the Member shall cooperate in assembling and transmitting pertinent data and documents, subject to receiving reasonable compensation for the work required to do so…" Also requires compliance with Circular 230, even if Member is not otherwise required to do so

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Whose Files Are They Anyway (cont'd)?

- Other considerations:
  - Mutual cooperation/respect of others in the community
  - How you value collegiality in the profession
  - What it will cost you to provide what the client wants
  - Your personal sense of ethics

28

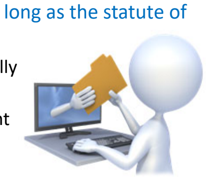
Other File/Records Considerations

- Provide originals or copies?
  - You need to keep enough information to defend a claim of malpractice or negligence
  - If you provide computer files, consider providing only .pdfs. This prevents your files from being changed or used by your competitors
  - If you have original signatures on plan documents, consider providing them
- Correspondence, file notes, etc.
  - Not generally considered part of client's file
  - Review and cull carefully

29

Other File/Records Considerations (cont'd)

- If provide entire file, consider asking for waiver of claims (i.e., if they have the file, how do you defend claims against you?)
- Keeping files
  - You should keep your records as long as the statute of limitations on a lawsuit is open
    - You can reduce that contractually in your service agreement
    - Keeping *your* records is different from keeping *their* records



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Other Considerations

31

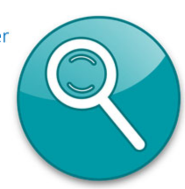
Exit Interview

- Consider having a conversation with the client about the termination of services, regardless of reason:
  - How did we meet your needs?
  - Where did we fall short?
  - Who did you think did a great job? A bad job?
  - What is the most important thing a TPA can do for you?
  - Where did you think our priorities and yours were most divergent?

32

Your Post-Mortem

- Once you have diagnosed what went right and wrong, share it with those who can make a difference
  - This is not finger-pointing
  - It is diagnosis and treatment
  - It can make your organization stronger
  - Of course, if you observe a troubling trend with a given staff member, it might be valuable to address that



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In Sum …

- No one wins ‘em all … so, don’t take a loss too seriously
- But … don’t shy from facing realities that can help you do better work in the future

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Questions?

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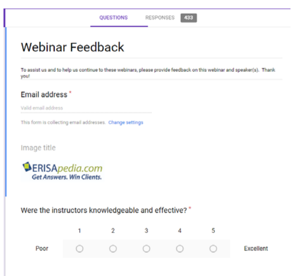

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