

Ethics Interface

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This Ethics Interface column was written as a collaborative effort of its panel: Dorajane Apuna, Mary Barros-Bailey, and Ann Wallace with consultative support of Roger Weed and Tyron Elliot. The author is grateful for their wisdom and collective experience.

The column is meant to be an educational forum for life care planners. It is not designed to offer an authoritative opinion from the editor or editorial board of the *Journal of Life Care Planning*, the board of the International Academy of Life Care Planners (IALCP), or the board of its parent organization, the International Association of Rehabilitation Professionals (IARP), nor is it designed to represent or replace official opinions from the certifying body or other organizations associated with the practice of life care planning.

Ethics Dilemma

I am a nurse and a new life care planner. I continue to work clinically in a rehabilitation hospital. A defense attorney asked for my services on a case. His client had been injured in an accident and had been a patient at my facility. I always get permission from administration to work on a case if the injured person has been a patient at my hospital and did so for this case. My ethics dilemma is that I overheard a conversation between two nurses about the manner in which the accident of this person occurred. This information would be very valuable to the attorney who retained me. I understand the privacy restrictions in my work as a nurse. Do I have a conflict in this case? What constitutes a conflict? I really want to work on this case.

Response

Information about a patient that is obtained from any source in the health care work place is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Employees of health care agencies must be trained in privacy procedures and the facility must take disciplinary action if the employee fails to comply with those policies (Retrieved from: <http://www.hhs.gov/news/facts/privacy.html> on February 9, 2007). Not only are you under no obligation to share the information with your retaining attorney; you cannot breach the confidentiality of your hospital work setting. The International Academy of Life Care Planners (IALCP) Standards of Practice states, "The Life Care Planner should possess knowledge of professional legal requirements including the legal principles of consent and confidentiality including HIPAA requirements." That being said, some states have part of a statute that says a client must waive confidentiality to medical privacy, as it relates to a lawsuit in a personal injury case.

It is important to understand the difference in your role as a life care planner and as a consultant to the case. As a life care planner, you have been retained and brought into the case to address the issue of damages, not liability. Liability concerns do not have a place in your role as a life care planner unless you feel the conversation you heard will compromise your ability to provide an unbiased life care plan. The Commission on Health Care Certification's

(CHCC) Principle Two states, "Life care planners have a obligation to provide unbiased objective opinions whether the evaluation or care planning service will be requested by the third party or directly from the plaintiff counsel...they will clearly define through written or oral means, the limits of their relationship, particularly in the areas of informed consent and legally privileged communications to all involved individuals."

Merriam-Webster Online (Retrieved February 11, 2007 from <http://www.webster.com/on>) defines a conflict of interest as "a conflict between the private interests and the official responsibilities of a person of trust." If you were retained to work on the case as a consultant, your role is different and can involve assisting the attorney with strategy. In this circumstance, there may be a duty to disclose and a conflict seems evident. You should decline to work on this case. It is important to remember that even when you do not have a true conflict, there may be times where you are uncomfortable working on a specific case. It is always your prerogative to decline work if it just does not "feel right."

This dilemma touches on other central concepts significant to life care planners that will be discussed in future columns. The issue of dual relationships is an important one and the ethical dilemma described in this column does have some components of a dual relationship. Although a client can waive confidentiality, privilege and confidentiality are vital legal concepts that should be familiar to the life care planner and/or explored in greater depth.

New Ethics Dilemma for Consideration:

I wrote a post on a listserv and described enough specifics on a case for the opposing life care planner to recognize. The post asked for an opinion from fellow life care planners on a topic related to the case. At trial, the opposing attorney brought forth a print out of the listserv query and posed questions to me suggesting that I had been so unsure of my opinion that I had to ask colleagues about it. My ethics question is: Did the life care planner, who provided the listserv post to the attorney, violate any ethics guidelines?

The *Journal of Life Care Planning* welcomes the submission of real world ethics dilemmas from practicing life care planners. Submissions will be sanitized to remove any identifying information and to promote confidentiality by keeping submissions in the strictness of confidence. Please send confidential submissions via email to nancymitchell4574@yahoo.com.
