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Ethics Interface

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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.

Ethical Dilemma

I was recently asked by an attorney to take a reduction on my bill because the case was lost at trial. This attorney is an important referral source to me and I want to stay in her good graces. Is there an ethical problem with me providing a discount? I know the attorney lost a lot of money and time on this case.

Response

Life care planning standards of practice from the International Academy of Life Care Planners and the Commission on Health Care Certification Standards and Examination Guidelines do not seem to offer guidance on this issue. It was necessary to look to the guidelines written for the core professions of life care planners where forensic work is more typical and, even then, this specific situation was addressed only in proposed standards written for rehabilitation counselors.

Commission on Rehabilitation Counselor Certification

Note: Standards of practice for rehabilitation counselors who do forensic work are in the process of revision with expected ratification by the Commission on Rehabilitation Counselor Certification (CRCC) in June 2009 and expected effective date in January 2010. The guiding principles offer us direction (Commission on Rehabilitation Counselor Certification, 2009). The proposed revision reads:

F.4. FORENSIC BUSINESS PRACTICES

a. PAYMENTS AND OUTCOME. Rehabilitation counselors do not enter into financial commitments that may compromise the quality of their services or otherwise raise questions as to their credibility. Rehabilitation counselors neither give nor receive commissions, rebates, contingency or referral fees, gifts, or any other form of remuneration when accepting cases or referring evaluees for professional services. While liens should be avoided, they are sometimes standard practice in particular trial settings. Payment is never contingent on outcome or awards.

American Medical Association

The American Medical Association (AMA) Code of Medical Ethics (2009), Opinion H-265.994 (b) reads, "The AMA opposes payment of contingent fees for all types of medicolegal consultations, including management services provided by firms engaged in locating physician consultants."

Print Resource

At least one print resource suggests, "*Experts should avoid contingent fees*. These are not only unethical, but they may open an expert to potentially devastating cross-examination" (Babitsky et al., 2006, p. 385). Babitsky et al. (2006) also, adds, "Contingency fee agreements by experts-those that are in whole or in part on contingent upon success in a case-are unethical and illegal in most states and should be avoided" (p. 385).

The above references, with the exception of the proposed standards for rehabilitation counselors, do not directly address accepting a lower fee at the completion of a case.

It is likely a poor business practice to reduce a bill based on outcomes. This could cause significant problems for you in the future. It is clear that if you reduced your fee and then took another case from the attorney, the same thing might happen again and this may affect the relationship and alter your ability, even unconsciously, to be objective. It opens this question for opposing attorneys.

Once the planner reduces a bill, there is the presumption that it will be done again when a case is lost. It will create the impression that that which is not paid up front can be written off if the outcome is not good. If more referrals are expected from this attorney, a pattern has been set. Other attorneys who may learn of this reduction may well expect the same. When asked at deposition or trial if you had discounted fees based on the outcome, you would have an answer that would open itself for numerous other questions.

References

The American Medical Association Code of Medical Ethics. (2009). Opinion H-265.994. Retrieved March 26, 2009 from www.ama-assn.org/ad-com/polfind/Directives.pdf

Babitsky, S., Mangraviti, J., & Babitsky, A. (2006). The A-Z Guide to Expert Witnessing. Falmouth, MA: SEAK, Inc.

Commission on Rehabilitation Counselor Certification. *Draft of code of professional ethics for rehabilitation counselors* (2009). Schaumburg, IL: Author. Retrieved April 22, 2009 from http://www.crccertification.com/filebin/pdf/CRCC_DraftRev_COE200903.pdf

New Ethical Dilemma

I need help understanding who I can talk to when working on a legal life care planning case:

(1) As a Plaintiff-retained life care planner and vocational expert on a personal injury case, I have a signed release. Can I consult with the physical therapist who conducted a Functional Capacity Evaluation for the Worker's Compensation portion of the case, to which I am not a party, and prepared a rather disparaging report? I would be seeking clarification regarding the evaluation, as the report did not specify the protocol and test instruments used. I may be able to state reasons I would not rely on the report.

(2) When retained by the defense, can I call the last and previous employers to inquire regarding job requirements, performance and references, without a signed release?

(3) When retained by the defense, can I call the treating doctor's office or the rehabilitation institution where a plaintiff underwent recovery, to ask generic questions regarding procedures, costs, and standard discharge recommendations? I do not have a signed release from the evaluee but my questions are generic.

(4) In a workers compensation case, I have been retained by the defense and I am going to conduct an evaluation. At court I run into the plaintiff attorney and we have a conversation about scheduling the evaluation. We are familiar with one another from cases wherein he/she has retained me as the plaintiff expert, and in this small venue, plaintiff and defense attorneys regularly share experts. Is it ethical for me to talk to opposing counsel directly?

A response to the above ethical dilemma will be published in the next issue of the *Journal of Life Care Planning.* The *Journal of Life Care Planning* welcomes the submission of real world ethical dilemmas. Submissions will be altered to promote confidentiality and be kept in strict confidence. Please send submissions via email to nancymitchell4574@yahoo.com.