

Ethics Interface

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Note: It is with great sadness the life care planning community must say goodbye to Tyron Elliott who passed away March 28, 2011. Tyron, an attorney in Manchester, Georgia, was one of the primary presenters for the life care planning forensic module for many years. His presentations at life care planning and forensic conferences were entertaining and educational. He published in the case management and life care planning texts and journals. Tyron brought outstanding insight and wisdom to the Ethics Interface column providing editorial support. His accessibility and depth of understanding about the life care planning process was invaluable to the column. He will be greatly missed by his life care planning friends. Please enjoy this issue's Ethics Interface column, Tyron's last formal contribution to the Journal of Life Care Planning.

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This column is a collaborative effort of Nancy Mitchell, Mary Barros-Bailey, Dorajane Apuna, and Dianne Simmons-Grab. The authors are grateful for the editorial support, wisdom and collective experience of Roger Weed and Tyron Elliot.

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 bodies or other organizations associated with the practice of life care planning.

Authors' note: In response to the ethics presentation at the International Symposium on Life Care Planning, September 13-14, 2010, in Orlando, Florida, this column will summarize previous columns regarding the issue of electronic communications, its ethical use and disposal. Dr. Mary Barros-Bailey has guest written columns on these topics and the writing below is largely hers.

Records Retention and Maintenance

When a lawsuit is filed, the person waves his or her right to medical privilege. However, the federal court has recently required the removal of personal medical identification on any exhibits. Privacy laws are likely to continue and become even more restrictive. Life care planners can best obtain guidance in this area from the standards of practice or codes of ethics for life care planners and from those of their primary profession. Availability, access, and maintenance of records have previously been addressed in this column as they pertain to codes of ethics for life care planners as well as occupational therapists, disability managers, rehabilitation counselors, and related disciplines. *The Standards of Practice for Life Care Planners* (IALCP, 2006) provides very broad guidance in this regard stating: "Life Care

Planners are expected to maintain appropriate confidentiality..." (p. 128). Further, section A.1., Confidentiality, promotes "Appropriate confidentiality is a sensitive and important concept" (p. 128). In addition, the International Commission on Health Care Certification (ICHCC) *Standards and Examination Guidelines*, Rule 6.4 (ICHCC, 2007) states: "Disability examiners and life care planners will safeguard the maintenance, storage, and disposal of patient records so that unauthorized persons shall not have access to these records" (p. 39). *The Commission on Rehabilitation Counselor Certification* (CRCC) Code of Professional Ethics for Rehabilitation Counselors (2010) specifically addresses electronic communications and states: "Rehabilitation counselors are aware that electronic messages are considered to be part of the records of clients. Since electronic records are preserved, rehabilitation counselors inform clients of the retention method and period, of who has access to the records, and how the records are destroyed" (Section J.6.a., p. 29). Also, according to the *Occupational Therapy Code of Ethics and Ethics Standards* (American Occupational Therapy Association, 2010), occupational therapists are called to "Maintain the confidentiality of all verbal, written, electronic, augmentative, and non-verbal communication, including compliance with HIPAA regulations" (Principle 3.H., p. 6).

Beyond the provisions in these professional codes, and the Health Insurance Portability and Accountability Act (HIPAA) provisions we have been aware of as life care planners since 1996, as of January 13, 2010 additional Federal guidelines through Part III, 45 CFR Part 170 of the Department of Health and Human Services also guide the maintenance and transference of our records. This interim rule, referred sometimes as the HITECH Act, includes standards that update some of the provisions in HIPAA for protected health information (PHI). In particular, HITECH requires that those covered by the Act ensure the systems they use are secure, can maintain data confidentiality, and can work with other systems to share information. If security breaches are detected, patients must be notified. In addition, the Act calls for ensuring access by the patient to electronic records and the accounting of disclosure of PHI to patients.

For guidance about the manner by which a life care planner can destroy records, the HIPAA Privacy and Security Rules Frequently Asked Questions About the Disposal of Protected Health Information (1996) states:

Examples of proper disposal methods may include, but are not limited to:

- For PHI on electronic media, clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing media to a strong magnetic field in order to disrupt the recorded magnetic domains) or destroying the media (disintegration, pulverization, melting, incinerating or shredding) (p. 1-2).

This is a lot of technology information to learn for those who are used to working in a hard copy world. What can you do, and what resources are available to you right now at your fingertips or in your office? The United States Attorney's office recommends:

- Laptops, hard drives, flash drives, CDs, and floppy disks employ hard drive encryption
 - Security and other applications are kept updated
 - Mobile computing devices use anti-viral software and host-based firewall mechanisms
 - Removable media and hard drives are processed (sanitized, degaussed, destroyed) when no longer needed
 - Contracting firms keep an accurate inventory of devices
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Available resources may include secured off-site back up or communication systems, including: mozy.com, zipcorp, and Network Solutions or Pointsec encryption. Password management protocols or programs, such as revolving and randomly-selected passwords from a list of 20 or 30 strong passwords might be helpful.

References

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New Dilemma

I recently completed a life care plan for a child who needs case management services. The case has settled and my work on the case is completed. The family has indicated they want to contract with me to work as the case manager. Would this be considered a dual relationship?

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 to nancymitchell4574@yahoo.com.