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Ethics Interface

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This column is a collaborative effort of Nancy Mitchell, Mary Barros-Bailey, Dorajane Apuna, Dianne Simmons-Grab, Roger Weed and Judy LaBuda, Esq. The author is grateful for their editorial support, 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.

Dilemma

Is there an ethical problem when a life care planner assists an attorney with deposition questions for the opposing life care planner? Does this make the life care planner an advocate? How far should we go to "rip apart" the opposing life care plan/life care planner?

Response

To educate and assist the retaining attorney in preparing deposition and/or trial questions, it is common practice in litigation for life care planners, consultants, and others to review the plans and opinions of the opposing attorney's expert witnesses. The life care planner who does such a review, has the unique knowledge and training of methodology needed for a credible life care plan. This knowledge can be valuable to retaining attorneys, as they seldom are as knowledgeable on the subject matter as the opposing attorney's expert witness.

It is important, however, to be professional and objective when providing this service. The critique should be a review of the life care planner's education and training as well as the methodology and contents of the life care plan. The review should be based on clinical practice guidelines, published protocols and tenets, and standards of practice; analysis should never be personal or mean-spirited. Resources for guidance can be found in the standards of practice for life care planners and in the standards of practice for the individual's primary profession.

Prior to providing such a critique, it is imperative for life care planners to be clear on the distinction between the role of a consultant in a case versus the role of a retained expert witness. The information, advice and analysis a consultant provides to an attorney regarding the life care plan of an expert retained by opposing counsel, is, with a few specific exceptions, not discoverable in litigation. However, the comments and critique a life care planner provides to an attorney as an expert witness, of an opposing expert's life car plan is generally discoverable. Thus, prior to providing such services to an attorney, clarify with the retaining attorney whether one's services are being retained in the role of a consultant or as an expert witness. If retained as an expert, know that the analysis and critique is subject to discovery in deposition or trial.

The standards of practice from varied sources provide us guidance and particularly call for integrity in our professional relationships. Fellow life care planners should be treated with respect and not critiqued in a disparaging manner.

The International Academy of Life Care Planners (IALCP) –
Standards of Practice
III. ROLE AND FUNCTIONS OF LIFE CARE PLANNING
A. Scope of practice/applications
C. Functions
2. Plan Development Research
5. Collaboration
a. Develops positive relationships with all parties.
c. Shares relevant information to aid in formulating recommendations and opinions.
6. Facilitation
a. Maintains objectivity and assists others in resolving disagreements about appropriate content for the Life Care Plan.

More specific guidance is given in ***Principles and Associated Rules*** from the International Commission on Health Care Certification

Principle 1 - Moral and Legal Standards
Certified Life Care Planners shall behave in legal, ethical, and moral manner in the conduct of their profession, maintaining the integrity of the Code of Professional Ethics and avoiding any behavior which would cause harm to others or Entities.

Principle 4 - Professional Relationships
[L]ife care planners shall act with integrity in their relationships with colleagues, other organizations, agencies, institutions, referral sources, and other professions so as to facilitate the contribution of all specialists toward achieving optimum benefit for patients.
R4.6 [L]ife care planners will not discuss with patients the reputations and/or competency of colleagues in a disparaging manner, nor will they provide judgments to the patients regarding the quality of treatment they may have received from other professionals
The Occupational Therapy Code of Ethics and Ethics Standards provides guidance for various ethical principles.

NONMALEFICENCE
Principle 2. Occupational therapy personnel shall intentionally refrain from actions that cause harm.
Nonmaleficence imparts an obligation to refrain from harming others (Beauchamp & Childress, 2009). The principle of nonmaleficence is grounded in the practitioner's responsibility to refrain from causing harm, inflecting injury, or wronging others. While beneficence requires action to incur benefit, nonmaleficence requires non-action to avoid harm (Beauchamp & Childress, 2009). Nonmaleficence also includes an obligation to not impose risks of harm even if the potential risk is without malicious or harmful intent.

AUTONOMY AND CONFIDENTIALITY

Principle 3. Occupational therapy personnel shall respect the right of the individual to self-determination.

G. Ensure that confidentiality and the right to privacy are respected and maintained regarding all information obtained about recipients of service, students, research participants, colleagues, or employees. The only exceptions are when a practitioner or staff member believes that an individual is in serious foreseeable or imminent harm. Laws and regulations may require disclosure to appropriate authorities without consent.

SOCIAL JUSTICE

Principle 4. Occupational therapy personnel shall provide services in a fair and equitable manner.

D. Advocate for just and fair treatment for all patients, clients, employees, and colleagues, and encourage employers and colleagues to abide by the highest standards of social justice and the ethical standards set forth by the occupational therapy profession.

FIDELITY

Principle 7. Occupational therapy personnel shall treat colleagues and other professionals with respect, fairness, discretion, and integrity.

B. Preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated by national, state, or local laws or permission to disclose is given by the individual.

The Certified Disability Management Specialist (CDMS) ***Code of Professional Conduct*** (2010):

Principle 4: Certificants will act with integrity in dealing with other professionals.

For the Commission on Rehabilitation Counseling (CRCC) ***Code of Professional Ethics for Rehabilitation Counselors*** (2010):

D.5. RESPONSIBILITY TO THE PUBLIC AND OTHER PROFESSIONALS

g. DISPARAGING REMARKS. Rehabilitation counselors do not disparage individuals or groups of individuals.

GLOSSARY OF TERMS: DISPARAGING REMARKS: public statements that degrade, belittle, minimize, defame, demean, humiliate, or scorn individuals or groups of individuals. These differ from critiques, which are intended to provide comparisons of thoughts, ideas, methods, work products, or conclusions. If statements criticize the individual as a person, their character or intellect, or are based on incorrect information or fictional claims, these are considered disparaging remarks.

F.2. REHABILITATION COUNSELOR FORENSIC COMPETENCY AND CONDUCT

a. OBJECTIVITY. Rehabilitation counselors are aware of the standards governing their roles in performing forensic activities. Rehabilitation counselors are aware of the occasionally competing demands placed upon them by these standards and the requirements of the legal

system, and attempt to resolve these conflicts by making known their commitment to this Code and taking steps to resolve conflicts in a responsible manner.

h. CRITIQUE OF OPPOSING WORK PRODUCT. When evaluating or commenting upon the professional work products or qualifications of other experts or parties to legal proceedings, rehabilitation counselors represent their professional disagreements with reference to a fair and accurate evaluation of the data, theories, standards, and opinions of other experts or parties.

References

American Occupational Therapy Association. (2010). Occupational Therapy Code of Ethics and Ethics Standards. Retrieved from www.aota.org/Practitioners/Ethics/Docs/Standards/38527.aspx

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New Dilemma

What do you do when a physician colleague testifies that only nurses and physicians are qualified to author a life care plan, as they have the most medical background? He does not define CRCs as a part of this group.

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.