

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

I am a life care planner who works mostly in the state of my residence. I recently was in court in another state and testified on the same day as a rehab counselor who provided expert testimony on the injured person's work losses. He told me he had been impressed with my work and could potentially refer me more cases. He wants me to pay him a percentage of my fees for any cases he refers to me. I want to grow my business but this somehow seems wrong to me. It is very important to me to follow the ethical standards of our practice.

Response

Some decisions are related to ethics and others are primarily business in nature. The following standards appear to address this issue but may have been written with a different intent. It is wise to consider how your actions may appear to a jury.

ICHCC Standards and Examination Guidelines (2007), ICHCC Rules of Professional Conduct

Principle 5 - Public Statements/Fees

Disability examiners and life care planners shall adhere to professional standards in establishing fees and promoting their services.

Rules of Professional Conduct

R5.1 Disability examiners and life care planners will neither give nor receive a commission or rebate or any other form of remuneration for referral of patients for professional services.

CODE OF PROFESSIONAL ETHICS FOR REHABILITATION COUNSELORS (2009)

K.3. FEES, BARTERING, AND BILLING

c. REFERRAL FEES. Rehabilitation counselors do not give or receive commissions, rebates, or any other form of remuneration when referring clients for professional services.

It would seem to the above standards indicate that the practice is wrong. However, according to Mary Barrows-Bailey, who was involved in the development of the standards for rehabilitation counselors, the intent of these standards was to promote the objectivity of a life care planner when accepting or referring work and to dissuade the life care planner's opinion from being influenced by the potential of financial gain by any party. It is critical to the standards of our profession that the opinion of the life care planner is not compromised by the referral source. Paying money or a "kickback" to a referral source may present an appearance of impropriety. Any appearance of impropriety could result in reduced credibility of the life care plan and ultimately harm the person who is the subject of the life care plan.

Whether to accept work from this source is a business decision as well as an ethical decision. It is crucial that a life care planner analyze how a "kick back" would appear if this had to be defended when testifying at deposition or trial. There should be no influence or appearance of influence by a referral source.

It is common practice for life care planners to work in a formal sub-contracting role. Establishing a sub-contract relationship with the referral source may be a more effective way to receive this referral and create a more defensible business practice. It would be helpful to have a clear written business agreement that outlines the sub-contractor relationship including but not limited to payment arrangement, and the lack of influence of the referral party on the subcontractor life care planner's opinions.

References

- The Commission on Health Care Certification (2007). *Standards and examination guidelines*. Retrieved September 15, 2011 from <http://ichcc.org/chcc%20standards%20and%20guidelines%20manual%202008.pdf>
- Commission on Rehabilitation Counselor Certification. (2010). *Code of professional ethics for rehabilitation counselors*. Schaumburg, IL: Author. Retrieved September 15, 2011 from <http://www.crc certification.com/>

New Dilemma

I have discovered an opposing life care planner has left all of his credentials lapse. I reported this to my retaining attorney. Do I have any further obligation to report this?
