Ethics Interface

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This column is a collaborative effort of Nancy Mitchell, Dorajane Apuna, Mary Barros-Bailey, 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

The plaintiff attorney who hired me to develop a life care plan for his client requested I not consult with the treating doctor. He told me this is not required in this jurisdiction. Is this an ethical violation?

Response

Life care planners come from varied clinical backgrounds and bring expertise from their specific scope of practice and experience. It is important for your competency as a life care planner to have adequate foundation for items included in the life care plan. The input of other health professionals is needed for foundation beyond your scope of practice. Treating physicians and therapists are often the ideal consultants to the process.

The attorney who retained you may have valid reasons for this request as there are times when the input of members of the treatment team is inappropriate, e.g., medical malpractice cases when the treatment team is affiliated with parties to the legal action; previous history or credibility issues of the treater that may negatively impact the case; or challenges with access to the treater. If for whatever reason, the treating physician cannot be used, medical foundation for the plan is still needed for items beyond your scope of practice. Encourage the retaining attorney to obtain this privately. If you must proceed, it is likely best business practice for you to note items in your plan that lack adequate foundation with a notation such as, "This may change upon input from a physician."

In the end, it is important you talk through this issue carefully with the retaining attorney so you understand the reasons for this request. If you think the attorney is making this request for an inappropriate reason, it may be best to decline the case.

Our various standards of practice do provide helpful guidance with this issue:

The *IALCP Standards of practice* states:

I. Introduction

C. Transdisciplinary Perspective

> Life Care Planning is a transdisciplinary specialty practice. Each profession brings to the process of Life Care Planning practice standards which must be adhered to by the individual professional, and these standards remain applicable while the practitioner engages in Life Care Planning activities. Each professional works within specific standards of practice for their

discipline to assure accountability, provide direction, and mandate responsibility for the standards for which they are accountable. These include, but are not limited to, activities related to quality of care, qualifications, collaboration, law, ethics, advocacy, resource utilization, and research. Moreover, each individual practitioner is responsible for following the Standards of Practice for Life Care Planning in addition to the standards for the qualifying profession.

III. ROLE AND FUNCTIONS OF LIFE CARE PLANNING

A. Scope of practice/applications

As a member of a health care profession, the Life Care Planner must remain within the scope of practice for that profession as determined by state or national bodies. The functions associated with performing Life Care Planning are within the scope of practice for health care professionals, or evidenced by assessment.

Research analysis of data and evaluation of care recommendations are key elements in the functions of life care planning. In performing these elements, the Life Care Planner will communicate with a variety of health care professionals regarding a case. The Life Care Planner does not assume decision-making responsibility beyond the scope of his/her own professional discipline.

C. Functions

c. Obtains information from medical records, client/family/significant others (when available or appropriate), and relevant treating or consulting health care professionals. If access to any source of information is not possible (e.g., denied permission to interview the client), this should be so noted in the report.

According to the *ICHCC standards in the rules of professional conduct*:

R1.4 ICHCC Certificants shall not engage in any acts or omission of a dishonest, deceitful, or fraudulent nature in the conduct of their professional activities.

R 4.2 ICHCC Certificants shall collaborate as a team with allied professionals in formulating reports when applicable.

According to the *Code of professional ethics for rehabilitation counselors*:

D.1. PROFESSIONAL COMPETENCE

a. BOUNDARIES OF COMPETENCE. Rehabilitation counselors practice only within the boundaries of their competence, based on their education, training, supervised experience, professional credentials, and appropriate professional experience. Rehabilitation counselors demonstrate beliefs, attitudes, knowledge, and skills pertinent to working with diverse client populations. Rehabilitation counselors do not misrepresent their role or competence to clients.

c. QUALIFIED FOR EMPLOYMENT. Rehabilitation counselors accept employment for positions for which they are qualified by education, training, supervised experience, professional credentials, and appropriate professional experience. Rehabilitation counselors hire individuals for rehabilitation counseling positions who are qualified and competent for those positions.

E.2. CONSULTATION

a. CONSULTATION AS AN OPTION. Rehabilitation counselors may choose to consult with professionally competent persons about their clients. In choosing consultants, rehabilitation counselors avoid placing consultants in a conflict of interest situation that precludes the consultant from being a proper party to the efforts of rehabilitation counselors to help clients. If rehabilitation counselors are engaged in a work setting that compromises this consultation standard, they consult with other professionals whenever possible to consider justifiable alternatives.

b. CONSULTANT COMPETENCY. Rehabilitation counselors take reasonable steps to ensure that they have the appropriate resources and competencies when providing consultation services. Rehabilitation counselors provide appropriate referral resources when requested or needed.

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.

b. QUALIFICATION TO PROVIDE EXPERT TESTIMONY. Rehabilitation counselors have an obligation to present to the court, regarding specific matters to which they testify, the boundaries of their competence, the factual bases (knowledge, skill, experience, training, and education) for their qualifications as an expert, and the relevance of those factual bases to their qualifications as an expert on the specific matters at issue.

e. VALIDITY OF RESOURCES CONSULTED. Rehabilitation counselors ensure that the resources used or accessed in supporting opinions are credible and valid.

f. FOUNDATION OF KNOWLEDGE. Because of their special status as persons qualified as experts to the court, rehabilitation counselors have an obligation to maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence. They are obligated also to use that knowledge, consistent with accepted clinical and scientific standards, in selected data collection methods and procedures for evaluation, treatment, consultation, or scholarly/empirical investigations.

g.DUTY TO CONFIRM INFORMATION. Where circumstances reasonably permit, rehabilitation counselors seek to obtain independent and personal verification of data relied upon as part of their professional services to the court or to parties to the legal proceedings.

F.3. FORENSIC PRACTICES

a. CASE ACCEPTANCE AND INDEPENDENT OPINION. While all rehabilitation counselors have the discretionary right to accept retention in any case or proceed within their area(s) of expertise, they decline involvement in any case when asked to take or support predetermined positions, assume invalid representation of facts, alter their methodology or process without foundation or compelling reasons, or where there are ethical concerns about the nature of the requested assignments.

The very definition of case management states that case management is a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates options and services required to meet an individual's health needs. It uses communication and available resources *to promote quality and a cost-effective outcome.*

The Code of professional conduct for case managers for standards, rules, procedures, and penalties states:

Section 2 Professional Responsibility, S2 - Representation of Practice:

Certificants will practice only within the boundaries of their education, training and professional experience and other professional credentials. They will not misrepresent their role or competence to clients.

The *CDMS Code of professional conduct*:

Section 1 Relationship with All Parties – RPC1.01 Representation of Practice:

Certificants shall practice only within the boundaries of their competence based on their education, training, appropriate professional experience and other professional credentials. They shall not misrepresent their role or competence.

RPC1.11 Research A Legal Compliance:

Certificants shall plan, design, conduct and report research in a manner consistent with the ethical principles of autonomy, beneficence, nonmaleficence, justice and fidelity and federal and state laws and regulations, including those governing research with human subjects.

AANLCP *Standard 11*: The Nurse Life Care Planner collaborates with individuals, families, health care providers, and others when possible and appropriate, in the conduct of nurse life care planning practice.

Communicates with individuals, families, and health care providers, when possible and appropriate, and relevant others as appropriate to the situation/health case or claim, in development of a life care plan;

Collaborates in creating a documented plan focused on diagnoses, outcomes and decisions related to care, delivery and approximate costs of services that indicates communication with individuals, families, when possible and appropriate, and relevant others as appropriate;

Standard 3. Outcomes Identification: The Nurse Life Care Planner discerns/considers expected outcomes for a plan specific to the individual or the situation/health case or claim.

Collects data in a systematic and ongoing process;

Involves the individual and parties germane to the individual's situation, when possible and as appropriate, to include family and caregivers, physicians, other health care providers, and representatives from the employer, school and other resources within the community, to ensure comprehensive data collection;

Prioritizes data collection activities based on the immediate condition, with anticipated

needs of the individual or situation/health case or claim;

References

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New Dilemma

I have a dear friend who is a life care planner. We live in different states and our paths have never crossed professionally. I was recently asked by a defense attorney to review her plaintiff life care plan. I initially told my retaining attorney, I thought the plan was reasonable. After pondering this over, I believe my initial opinion was impacted by our friendship and there are things in the life care plan that are unreasonable. What should I do now?