Ethics Interface

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This column is the collaborative effort of Nancy Mitchell, Dorajane Apuna, Mary Barros-Bailey, Dianne Simmons-Grab, Ann Neulicht, and Hon. Judith LaBuda. 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, or the board of its parent organization, the International Association of Rehabilitation Professionals, 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

Please address ethical pricing and billing practices for life care planners.

Response

The fee structure for life care planning services can vary greatly between individuals and even between regions of the country. This in itself is not a problem but it is important to have a fee agreement that clearly spells out fees and payment arrangements, preferably signed by the referral source. Consistency in the use of the signed fee agreement will prevent misunderstandings and potential problems.

Life care planners should also not enter into financial commitments that may compromise the quality of their services or otherwise raise questions as to their credibility. One must consider how the appearance of a specific practice may be viewed by the opposing attorney, the judge, or jury. For example, charging a flat fee for a case may give the appearance that you were less motivated to spend an adequate amount of time on preparation and analysis. On the other hand charging an hourly fee may result in a bill that the judge or jury may see as unreasonable.

Charges or reimbursement for life care planning services should not depend on the outcome of the case. Many life care planners have encountered attorneys who request the life care planner "cut a break" for their client or themselves after an unfavorable ruling. A decision to agree to a fee reduction which essentially could be viewed as a contingency fee, may provide future difficulties for the life care planner. The acceptance of a retroactive contingency fee may impact the life care planner's credibility in future cases and/or impact his or her reputation in the legal and rehabilitation communities.

Indeed, Barros-Bailey and Carlisle (in press) reference the guidelines outlined by the American Bar Association in Rule 3.4(b) its Model Rules (American Bar Association, 2012) that states: "A lawyer shall not … offer an inducement to a witness that is prohibited by law." Furthermore, the organization's Section of Litigation offered a Resolution in 2011 about this Rule:

… under the common law in most jurisdictions, it is improper to pay an expert a contingent fee. As the Annotated Model Rules explain, the expert's fees may not be contingent on the outcome "because of the improper inducement this might provide to an expert to testify falsely to earn a higher fee." (p. 8)

Thus, whether by the codes of ethics governing the practice of life care planning or those

governing the legal retaining party, contingency fees in either regard are improper.

A life care planner should keep accurate and detailed records of the time spent in his or her work to create a life care plan. These records can be useful to the life care planner as well as to the payer should any questions of the accuracy of billing or impropriety in billing be raised.

Due to collusion concerns and anti-trust laws, life care planners cannot fix prices in their area nor should they discuss the charges for their services on any listserv or public forum.

Relevant Organizational Standards

Commission on Health Care Certification (2007)

• Principle 1 – Professional and Legal Standards

ICHCC certificants shall behave in legal, ethical, and professional manner in the conduct of their profession, maintaining the integrity of the Code of the Professional Ethics and avoiding any behavior that would cause harm to other entities and/or individuals.

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.

• Principle 5 - Public Statements/Fees

ICHCC Certificants shall adhere to professional standards in establishing fees and promoting their services.

Rules of Professional Conduct

R5.1 ICHCC Certificants shall never give nor receive a commission or rebate or any other form of remuneration.

Commission on Rehabilitation Counselor Certification, Code of Professional Ethics for Rehabilitation Counselors (2010)

• A.3. Client Rights in the Counseling Relationship

a. Professional Disclosure Statement. Rehabilitation counselors have an obligation to review with clients orally, in writing, and in a manner that best accommodates any of their limitation, the rights and responsibilities of both rehabilitation counselors and clients. Disclosure at the outset of the counseling relationship should minimally include: ... (6) fees and billing arrangements ...

• A.8. Termination and Referral

c. Appropriate Termination and Referral. ...rehabilitation counselors may terminate counseling when in jeopardy of harm by clients or other persons with whom clients have a relationship, or when clients do not pay agree-upon fees.

• 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.

• K.3. Fees, Bartering, and Billing

a. Establishing Fees. In establishing fees for professional counseling services,

rehabilitation counselors consider the financial status and locality of clients. In the event that the established fee structure is inappropriate for clients, rehabilitation counselors assist clients in attempting to find comparable services of acceptable cost.

b. Advance Understanding of Fees. Prior to entering the counseling relationship, rehabilitation counselors clearly explain to clients all financial arrangements related to professional services. If rehabilitation counselors intend to use collection agencies to take legal measures to collect fees from clients who do not pay for services as agreed upon, they first inform clients of intended actions and offer clients the opportunity to make payment.
c. Referral Fees. Rehabilitation counselors do not give or receive commissions, rebates, or any other form of remuneration when referring clients for professional services.
d. Withholding Records for Nonpayment. Rehabilitation counselors may not withhold records under their control that are requested and needed for the emergency treatment of clients solely because payment has not been received.
e. Bartering Discouraged. Rehabilitation counselors ordinarily refrain from accepting goods or services from clients in return for rehabilitation counseling services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. Rehabilitation counselors participate in bartering only if the relationship is not exploitative or harmful to clients, if clients request it, if a clear written contract is established, and if such arrangements are an accepted practice in the community or culture of clients.
f. Billing Records. Rehabilitation counselors establish and maintain billing records that are confidential and accurately reflect the services provided, the time engaged in the activity, and that clearly identify who provided the services.

• K.4. Termination

Rehabilitation counselors in fee-for-service relationships may terminate services with clients due to nonpayment of fees under the following conditions: (1) clients were informed of payment responsibilities and the effects of nonpayment or the termination of payment by third parties; and, (2) clients do not pose an imminent danger to self or others.

Commission for Case Manager Certification Code, Professional Conduct for Case Managers for Standards, Rules, Procedures, and Penalties (2009)

• S 24 - Fees

Certificants will advise the referral source/payer of their fee structure in advance of the rendering of any services and will also furnish, upon request, detailed, accurate time and expense records. No fee arrangements will be made that could compromise health care for the client.

Certification of Disability Management Specialists Commission, *Code of Professional Conduct with Disciplinary Rules Procedures and Penalties* (2009)

RPC 1.18 – Fees

Certificants shall advise the payer of their fee structure in advance of rendering any services and shall also furnish, upon request, detailed, accurate records of professional activities.

International Association of Rehabilitation Professionals, Code of Ethics, Standards of Practice, and Competencies

• B9) Business Practices

a) Forensic Rehabilitation Experts/Consultants will neither give nor receive commissions, rebates, contingency fees, or any other form of remuneration when accepting a case or referring clients for professional services. Payment for services will not be contingent upon a case outcome or award.
b) Forensic Rehabilitation Experts/Consultants will not enter into financial commitments that may compromise the quality of their services.
c) Forensic Rehabilitation Experts/Consultants will not enter into fee arrangements that could influence their opinions in a case and otherwise raise questions as to their credibility.
f) Should a fee dispute arise during the course of evaluating a case and prior to trial, the Forensic Rehabilitation Expert/Consultant shall have the ability to discontinue his/her involvement in the case as long as no harm comes to the client.
g) If necessary to withdraw from a case after having been retained, the Forensic Rehabilitation Expert/Consultant will make a reasonable effort to assist the client and/or referral source in locating another Forensic Rehabilitation Expert/Consultant to take over the assignment.

Next Dilemma

I have been asked to evaluate the life care planning needs of a woman who is a member of a large local refugee community. Her rehabilitation physician is from the same ethnic community and practices functional medicine with medical recommendations that are very different from the consulting rehabilitation physician on the case. The consulting rehabilitation physician has made recommendations that are more consistent with what we learned in our LCP training from mainstream medical practices. I am struggling with how to be culturally sensitive to the needs of the evaluee and her rehabilitation physician and the recommendations of the consulting rehabilitation physician who will likely be representative of the kind of judge and jury who will hear this case. How do I address cultural issues in my life care plan?

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