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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 the Honorable 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

I am developing a life care plan for a non-English speaking family. The law firm that hired me sent an interpreter to my evaluation. Much of my assessment is based on the responses of the evaluee and his family that were then interpreted to me. I worry about accuracy when I have not heard something "first hand."

Response

The business practices of individual life care planners will likely vary when evaluating non-English speaking individuals and/or their families. Accuracy and lack of bias are the critical ethical issues.

A life care planner should avoid using a friend or family member to interpret. It may be prudent to only agree to work on a case when a professional interpreter is provided. A friend or family member used as an interpreter may have a bias or be embarrassed by a question and not present the information accurately to either the injured person or the life care planner.

It may be helpful to talk to the interpreter prior to the evaluation to determine their credentials including whether he or she is certified as a court reporter and/or has taken the interpreter's oath. Most jurisdictions must now provide interpreter services in court to litigants, free of cost even in civil cases. Obtaining a list of approved court interpreters, who often contract for work outside the court system, may be an option when seeking a qualified interpreter.

A life care planner may find it beneficial to have the interpreter repeat questions in English to ascertain understanding. Some life care planners audiotape evaluations when there is a language difference and have an external transcription service interpret the evaluation into a transcript. As this may be costly, it will be important for the life care planner's fee agreement to indicate potential costs that may be incurred and the source of the payment of these fees.

The frequency of the need for an interpreter during the evaluation process of the life care plan will likely vary regionally. Most life care planners will evaluate a non-English speaking evaluee at some point in their career. For others, this is a common occurrence.

There are different categories of interpreters including certified interpreters, professionally qualified interpreters and language skilled/Ad Hoc interpreters. Education programs can vary from 40-hour courses to master's degree training. Some interpreters are specially trained to perform medical interpretation. Individual states may have an interpreter registry kept by the state's Department of Health; some states require no qualifications to be listed on the state roster. There are at least two national certification bodies for interpreters and for these an individual must satisfy certain eligibility requirements and pass an examination. Not all languages are eligible for certification.

To determine whether an interpreter is nationally certified through the National Board for Certification for Medical Interpreters, go to **The National Board of Certification for Medical Interpreters** and search for the interpreter. To determine whether an interpreter is nationally certified through the Certification Commission for Healthcare Interpreters (CCHI), go to Welcome to the CCHI Community and search for the interpreter. For more information on CCHI, see **CCHI Certification Commission for Healthcare Interpreters, Candidate Examination Handbook**.

For more information about certification through the National Board for certification for Medical Interpreters, see **The National Board of Certification for Medical Interpreters Candidate Handbook** (PDF).

Healthcare interpreters have their own standards of practice. Their standards include accuracy, confidentiality, impartiality, respect, cultural awareness, role boundaries, professionalism, professional development, and advocacy. See http://www.ncihc.org/assets/documents/publications/NCIHC%20National%20Standards%20of%20Practice.pdf for more specifics.

Our various standards of practice do give us guidance in this case. All emphasize the life care plan must provide accurate information. Language that is clear and understandable to all parties must be used.

Relevant Organizational Standards

From the **International Academy of Life Care Planning Standards of Practice (2009)**:

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.

In addition, the individual practitioner must examine their qualifications as applied to each individual case. Therefore, a thorough knowledge of the medical diagnosis, disability and long-term care considerations, by virtue of education and experience, is a necessary component of the practitioner's competency for each individual case.

II. Philosophical Overview/Goals of Life Care Planning

The Life Care Plan should be a working document that provides accurate and timely information which can be easily used by the client and interested parties. It should be a document that can be updated and serve as a lifelong guide to assist in the delivery of health care services in a managed format. It is appropriate, if possible, for the care plan to be a collaborative effort among the various parties and should reflect goals that are preventive and rehabilitative in nature. As a dynamic document, the Life Care Plan will require periodic updating to accommodate changes and should have as its goal quality outcomes.

III. Role and Functions of Life Care Planning

B. Specialization features

The Life Care Planner must have skill and knowledge in understanding the health care needs addressed in a Life Care Plan. Consultation with others and obtaining education are expected when the Life Care Planner must address health care needs that are new or unfamiliar. The Life Care Planner must be able to locate appropriate resources when necessary. The Life Care Planner provides a consistent, objective, thorough methodology for constructing the Life Care Plan, while relying on appropriate medical and other health related information, resources, and personal expertise for developing the content of the Life Care Plan. The Life Care Planner relies on state-of-the-art knowledge and resources to develop a Life Care Plan. Specialized skills are required to successfully develop a Life Care Plan. These include, but are not limited to, the ability to research, critically analyze data, manage and interpret large volumes of information, attend to details, demonstrate clear and thorough written and verbal communication skills, develop positive relationships, create and use networks for gathering information, work autonomously, and demonstrate a professional demeanor and appearance.

C. Functions

1. Assessments – Assessment is the process of data collection and analysis involving multiple elements and sources.

a. Collects data that is systematic, comprehensive, and accurate.
b. Collects data about medical, health, biopsychosocial, financial, educational, and vocational status and needs.
c. Obtains information from medical records, client/family/significant others (when available or appropriate), and relevant treating or consulting health care professionals. If consulting health care 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.

7. Evaluation

a. Reviews and revises the Life Care Plan for internal consistency and completeness.
b. Reviews the Life Care Plan for consistency with standards of care and seeks resolution of inconsistencies.
c. Provides follow-up consultation to ensure that the Life Care Plan is understood and properly interpreted.

From the **Commission on Health Care Certification (2007):** Principle 2 – Evaluee and ICHCC Certificants Relationship ICHCC Certificants shall respect the integrity and protect the welfare of people and groups with whom they work. The primary obligation of the certificant is to the evaluee outside of independent medical examinations and independent review of plans in which no physician/patient relationship exists.

Principle 4 — Professional Relationships

ICHCC Certificants shall act with integrity in their relationships with colleagues, other organizations, agencies, institutions, referral sources and other professions as to facilitate the contributions of all specialists.

Rules of Professional Conduct

R. 4.1 ICHCC Certificants shall ensure that there is a mutual understanding of the evaluation report by all parties involved.

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

R 4.4 ICHCC Certificants shall obtain from other professionals essential medical records and evaluations for report development or evaluating function and impairment.

From the **Commission for Case Manager Certification Code, Professional Conduct for Case Managers:**

Section 1 – Advocacy

S 1 – The Advocate

Certified case managers will serve as advocates for their clients and ensure that:

a) a comprehensive assessment will identify the client's needs.

Section 2 – Professional Responsibility

S 2 – Representation of Practice

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

S 3 – Competence

Certificants will not:

a) handle or neglect a case in such a manner that falls below the

Certificant's reasonable obligations and responsibilities.

b) exert undue influence that adversely affects the outcome of case management services to the client.

c) exhibit a pattern of negligence or neglect in the handling of the Certificant's obligations or responsibilities.

Section 5 – Professional Relationships

S 23 – Unprofessional Behavior

It is unprofessional behavior if the Certificant:

b) engages in conduct involving dishonesty, fraud, deceit, or misrepresentation.

From the **CDMS Code of Professional Conduct (2010):**

Section 1 – Relationship with All Parties

RPC 1.01 – 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. They shall not attribute the possession of the certification to a depth of knowledge, skills, and professional capabilities greater than those demonstrated by achievement of certification.

RPC 1.03 – Competence

a. Negligence

Certificants shall not:

1. handle or neglect a case in such a manner that the certificant's conduct constitutes gross negligence (which for the purpose of this rule shall mean willful, wanton, or reckless disregard of the certificant's obligations and responsibilities).

2. exhibit a pattern of negligence in the handling of the certificant's obligations or responsibilities.

b. Impairment

Certificants shall refrain from accepting cases and/or providing professional services when their own physical, mental, or emotional impairments are likely to cause harm to a client or others. Certificants are to be alert to the signs of impairment, to seek assistance for problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

RPC 1.09 – Reports

Certificants shall be accurate, honest, unbiased, and timely in reporting the results of their professional activities to appropriate third parties.

RPC 1.10 – Records

c. Confidentiality

Certificants shall maintain any and all client records, whether written or recorded using electronic technology or audio/video devices, in a manner designed to ensure confidentiality, taking additional effort to maintain confidentiality as required by applicable laws and/or regulations.

RPC 1.11 – Research

b. Subject Confidentiality

Certificants who make original data available, report research results, or contribute to research in any other way shall omit the identity of the subjects unless an appropriate authorization has been obtained.

RPC 1.13 – Human Relations

a. Discrimination

Certificants shall:

1. demonstrate respect for clients with diverse populations regardless of age, color, culture, disability, ethnicity, gender, gender identity, race, national origin, religion/spirituality, sexual orientation, marital status/partnership, language preference, or socioeconomic status.

2. develop and adapt interventions and services to incorporate consideration of individual clients' cultural perspectives and recognition of barriers external to clients that may interfere with achieving effective outcomes.

RPC 1.14 – Conflict of Interest

Certificants shall fully disclose an actual or potential conflict of interest to all affected parties. If, after full disclosure, an objection is made by any affected party, the certificant shall withdraw from further participation in the case. Certificants shall refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as disability managers or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

From the **Commission on Rehabilitation Counselor Certification, Code of Professional Ethics for Rehabilitation Counselors (2010):**

E.2. CONSULTATION

c. INFORMED CONSENT IN CONSULTATION. When providing consultation, rehabilitation counselors have an obligation to review, in writing and verbally, the rights and responsibilities of both rehabilitation counselors and consultees. Rehabilitation counselors use clear and understandable language to inform all parties involved about the purpose of the services to be provided, relevant costs, potential risks and benefits, and the limits of confidentiality. Working in conjunction with the consultees, rehabilitation counselors attempt to develop a clear definition of the problem, goals for change, and predicted consequences of interventions that are culturally responsive and appropriate to the needs of consultees.

G.1. INFORMED CONSENT

a. EXPLANATION TO CLIENTS. Prior to assessment, rehabilitation counselors explain the nature and purposes of assessment and the specific use of results by potential recipients. The explanation is given in the language and/or developmental level of clients (or other legally authorized persons on behalf of clients), unless an explicit exception has been agreed upon in advance. Rehabilitation counselors consider personal or cultural context of clients, the level of their understanding of the results, and the impact of the results on clients. Regardless of whether scoring and interpretation are completed by rehabilitation counselors, by assistants, or by computer or other outside services, rehabilitation counselors take reasonable steps to ensure that appropriate explanations are given to clients.

G.7. TEST SCORING AND INTERPRETATION

b. CULTURAL DIVERSITY ISSUES IN ASSESSMENT. Rehabilitation counselors use caution with assessment techniques that were normed on populations other than that of the client. Rehabilitation counselors recognize the effects of

age, color, race, national origin, culture, disability, ethnicity, gender, gender identity, religion/spirituality, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law on test administrations and interpretations, and place test results in proper perspective with other relevant factors.

I.2. INFORMED CONSENT AND DISCLOSURE

a. INFORMED CONSENT IN RESEARCH. Individuals have the right to consent to become research participants. In seeking consent, rehabilitation counselors use language that: (1) accurately explains the purpose and procedures to be followed; (2) identifies any procedures that are experimental or relatively untried; (3) describes any attendant discomforts and risks; (4) describes any benefits or changes in individuals or organizations that might be reasonably expected; (5) discloses appropriate alternative procedures that would be advantageous for participants; (6) offers to answer any inquiries concerning the procedures; (7) describes any limitations on confidentiality; (8) describes formats and potential target audiences for the dissemination of research findings; and (9) instructs participants that they are free to withdraw their consent and to discontinue participation in the project at any time without penalty.

J.13. DISTANCE COUNSELING SECURITY AND BUSINESS PRACTICES

b. INTERNET SITES. Rehabilitation counselors practicing through Internet sites: (1) obtain the written consent of legal guardians or other authorized legal representatives prior to rendering services in the event clients are minor children, adults who are legally incompetent, or adults incapable of giving informed consent; and (2) strive to provide translation and interpretation capabilities for clients who have a different primary language while also addressing the imperfect nature of such translations or interpretations.

c. BUSINESS PRACTICES. As part of the process of establishing informed consent, rehabilitation counselors: (1) discuss time zone differences, local customs, and cultural or language differences that might impact service delivery; and (2) educate clients when technology-assisted distance counseling services are not covered by insurance.

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Next Dilemma

I was recently retained by a plaintiff attorney and just completed my in-home evaluation of the injured person. The evaluee and her family are wonderful but unsophisticated people. It is clear to me that this person has been given inadequate care by her treatment team who continues to be involved. Where can I share my opinions to make sure this woman gets the care she needs and deserves before the life care plan is implemented? Do I dare suggest a change in providers? What are my boundaries?

A response to the above ethical dilemma will be published in the next issue of the *Journal of Life Care Planning*. 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 via email to nancymitchell4574@yahoo.com.