Ethics Interface

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This column is the collaborative effort of Nancy Mitchell, Mary Barros-Bailey, Sherry Latham, 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.

Author's note: The author would like to thank Dianne Simmons Grab for her tireless work and support of the Ethics Interface column and congratulate her on her new position as editor of the *Journal of Life Care Planning*. In addition, a hearty welcome is offered to Sherry Latham as our newest committee member for the column. Special kudos to the Honorable Judith LaBuda for her input into this column.

Dilemma

I am working on the plaintiff side of a case and just completed my evaluation. During the evaluation, I became aware that the plaintiff is selling his opioid medications. How should I proceed?

Response

This is a serious claim, so you must first assess the credibility of the information you obtained and how you obtained it prior to determining how to proceed. First, did you properly inform the plaintiff that any of the information he or she provided you would not be confidential? If so, and we presume you followed this basic premise of life care planning, then your next consideration is whether or not to include the information in your report.

Did the plaintiff directly relate this information to you? Did a spouse or some reliable family member relate the information? Did a physician or pharmacist inform you the plaintiff was obtaining opioids from multiple sources that far exceed the number of opioids therapeutically prescribed? If you find the information credible, then you next will need to address how it impacts your assessment.

Does the information affect your recommendations in the life care plan; i.e., are opioids prescribed for the plaintiff and an expense that would otherwise be included in the life care plan? Are the opioids prescribed for pain and, if so, is the plaintiff failing to take the opioids for pain? If so, does this impact your recommendations regarding the type of medical treatment and medications the plaintiff would need for ongoing care? If you find the information impacts the recommendations of your life care plan, you should draft the plan to include the costs/treatment you would recommend if you had not obtained this information, as well as a plan to include the cost/treatment that results from your having obtained this information. It will be up to a judge or jury to ultimately decide if this information should impact the amount awarded, if any, to the plaintiff and thus you should not be the person who makes that ultimate decision.

Your evaluation is an objective assessment. If you elect to contact the retaining attorney prior to the inclusion of the information in your report, then you should not permit your report to be influenced by the direction of the retaining attorney. The retaining attorney may elect to have you refrain from writing a report and discontinue your services, but it is you, and not the retaining attorney, who must determine if the information is relevant to your life care plan.

It can be helpful to understand the reason the medication is being sold; e.g., if funds are needed for daily living expenses, there may be other accessible sources of funding. If the medication is not really needed, this should be a consideration in the inclusion of it in the life care plan.

Ultimately, you must remember that you are not the fact finder regarding how this information will affect the plaintiff's claim. It is your responsibility to draft an unbiased report that includes any credible information you have that affects the plaintiff's life care plan.

Relevant Organizational Standards

From the **International Academy of Life Care Planning Standards of Practice (2015)**:

II. PHILOSOPHICAL OVERVIEW / GOALS OF LIFE CARE PLANNING

Goals of Life Care Plans:

In life care planning, the evaluee is defined as the person who is the subject of the life care plan.

A. To assist the evaluee in achieving optimal outcomes by developing an appropriate plan of rehabilitation, prevention, and/or reduction of complications. This may include recommendations for evaluations or treatment that may contribute to the evaluee's level of wellness or provide information regarding treatment requirements.

B. To provide health education to the evaluee and relevant parties, when appropriate.

III. STANDARDS OF PERFORMANCE

2. STANDARD: The life care planner shall practice in an ethical manner and follow the Code of Ethics of his or her respective professions, roles, certifications and credentials.

MEASUREMENT CRITERIA:

a. Follows the Code of Ethics for his or her profession.

b. Follows the Code of Ethics for his or her professional roles, certifications, and credentials.

IV. STANDARDS OF PRACTICE

2. STANDARD: The life care planner must have skill and knowledge in understanding the health care needs addressed in a life care plan.

MEASURMENT CRITERIA:

Consults with others and obtains education when the life care planner must address health care needs that are new or unfamiliar.

7. STANDARD: The life care planner seeks collaboration when possible.

MEASUREMENT CRITERIA:

a. Fosters positive relationships with all parties.

b. Seeks expert opinions, as needed.

c. Shares relevant information to aid in formulating recommendations and opinions.

From the **Commission on Health Care Certification (2013)**:

X. PRINCIPLES AND ASSOCIATED RULES

<u>Principle 1 - Professional and Legal Standards</u>

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, which would cause harm to other entities and/or individuals.

Rules of Professional Conduct:

R1.1 ICHCC Certificants shall obey the laws and statutes in the legal jurisdiction in which they practice and are subject to disciplinary action for any violation, the extent that such violation suggests the likelihood of professional misconduct.

<u>Principle 6 - Confidentiality</u>

ICHCC Certificants shall respect the confidentiality of information from evaluees, their representatives and any other sources.

Rules of Professional Conduct:

R6.1 ICHCC Certificants shall inform evaluees or their representative when applicable of the service to be provided regarding the limits of confidentiality.

R6.2 ICHCC Certificants shall inform evaluee confidentiality is waived when the ICHCC Certificant has good reason to believe that circumstances are life threatening or that laws of the state in which the ICHCC Certificant practices requires reporting of suspected abuse or neglect.

From the **Commission for Case Manager Certification Code, Professional Conduct for Case Managers (2015):**

PRINCIPLES

Principle 7: Board-Certified Case Managers (CCMs) will obey all laws and regulations.

STANDARDS FOR BOARD-CERTIFIED CASE MANAGER (CCM) CONDUCT

Section 2 – Professional Responsibility

S 4 – Legal and Benefit System Requirements Board-Certified Case Managers (CCMs) will obey state and federal laws and the unique requirements of the various reimbursement systems by which clients are covered.

From the **CDMS Code of Professional Conduct (2014):**

PRINCIPLES

Principle 7: Certificants shall obey all laws and regulations, avoiding any conduct or activity that could harm others.

RPC 1.12 – Misconduct: Certificants shall not engage in professional misconduct. It is professional misconduct if the certificant: a. knowingly assists or induces another to violate or attempt to violate the Code, or does so through the acts of another;

RPC 2.03 – Confidentiality: a. Disclosure Certificants shall inform the individual client at the outset of the certificant−client relationship that any information obtained through the relationship may be disclosed to third parties. Disclosure of information shall be limited to what is necessary and relevant, expect that the certificant must reveal information to appropriate authorities, as soon as and to the extent that the certificant reasonably believes necessary, to prevent the individual client from (1) committing acts likely to result in bodily harm or imminent danger to the individual client or others or (2) committing criminal, illegal, or fraudulent acts.

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

d. CONFLICTS BETWEEN ETHICS AND LAWS. Rehabilitation counselors obey the laws and statutes of the legal jurisdiction in which they practice unless there is a conflict with the Code. If ethical responsibilities conflict with laws, regulations, or other governing legal authorities, rehabilitation counselors make known their commitment to the Code and take steps to resolve conflicts. If conflicts cannot be resolved by such means, rehabilitation counselors may adhere to the requirements of law, regulations, or other governing legal authorities.

From the American Association of **Nurse Life Care Planners, Nurse Life Care Planning Scope and Standards of Practice (2014)**:

Standard #3. The Nurse Life Care Planner demonstrates high standards of professional conduct in delivering Nurse Life Care Planning services.

Nurse Life Care Planning explanation:

- The Nurse Life Care Planner demonstrates honesty, integrity, responsibility, accountability, timeliness, and respect for human dignity.
- The Nurse Life Care Planner practices ethically and lawfully.

Standard #4. The Nurse Life Care Planner safeguards privacy rights.

Nurse Life Care Planning explanation:

- The Nurse Life Care Planner exercises responsibility, discretion and respect in handling and use of all protected or sensitive information and materials.
- The Nurse Life Care Planner considers that the rights, well-being, and safety of the individual should be the primary factors in arriving at any professional judgment concerning the disposition of confidential information.

Standard #5. The Nurse Life Care Planner assumes responsibility and accountability for professional action, opinions, recommendations, and commitments.

Nurse Life Care Planning explanation:

- The Nurse Life Care Planner assumes accountability for Life Care Plan and actions, opinions, and decisions.

A response to the above ethical dilemma will be published in the next issue of the *Journal of Life Care Planning*. This journal welcomes the submission of real world ethical dilemmas. Submissions will be altered to promote confidentiality and kept in strict confidence. Please send submissions via email to nancymitchellot@gmail.com.

References

American Association of Nurse Life Care Planners. *Nurse Life Care Planning Scope and Standards of Practice*. September 19, 2014, pp. 1-53.

Certification of Disability Management Specialists Commission. (2014). CDMS Code of Professional Conduct. Retrieved from http://www.cdms.org/uploads/files/CDMS_Code_of_Professional_Conduct.pdf

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