

Eliciting Rehabilitation Recommendations During Forensic Life Care Plan Consultations

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Abstract

A life care plan—a product of expert analysis and a roadmap to identify lifelong rehabilitation interventions for a person with disabilities—typically requires multidisciplinary input. Through research and by consulting with treating professionals and presumably knowledgeable experts, life care planners assemble information about the person with a disability's presenting problems and appropriate recommendations for present and future care. Difficulties with the information exchange, however, can complicate and even derail a life care planner's efforts. Discussed herein are reasons these communications can go awry, and suggestions to facilitate interactions with life care plan contributors. Additionally, ethical and practice standards associated with eliciting life care plan recommendations are discussed.

Eliciting Rehabilitation Recommendations During Forensic Life Care Plan Consultations

When determining recommendations beyond their qualifications to independently prescribe, life care planners rely on qualified allied professionals (i.e., contributors to a life care plan) for assistance (International Academy of Life Care Planners, 2015; Pomeranz, Yu, & Robinson, 2014; Weed, 2004). Full contributor cooperation facilitates preparation of a comprehensive life care plan capable of withstanding the scrutiny imposed by interested parties—namely, attorneys, opposing experts, economists, insurance adjusters, judges, and triers of fact; however, this collaboration is sometimes elusive. Further complicating the life care planner's task are ethical and standards of practice concerns that can make obtaining comprehensive recommendations and managing communications with contributors challenging.

A life care plan contributor is a professional with whom a life care planner consults to elicit treatment recommendations. Qualified contributors have knowledge of an individual's presenting problems, history, and recent status, and possess expertise necessary to propose and prescribe appropriate rehabilitation interventions. The knowledge necessary to provide life care plan input can be gained via reviewing pertinent records, rendering treatment, conducting an examination(s), research, and expertise achieved through professional experiences.

This article explores reasons undergirding barriers to secure contribution cooperation. Prospective contributors' reluctance—conscious and/or unconscious—to collaborate with a consultation can be complex, and insight and sensitivity to these factors can dismantle barriers that life care planners encounter. Additionally, preemptive measures a life care planner can employ to facilitate a life care planning

consultation are discussed, along with ethical and practice standards considerations.

Barriers to Securing Contributor Cooperation

Major barriers that life care planners encounter during efforts to secure contributor recommendations include contributor inhibition about participating in consultations in which litigation is pending, contributors' preoccupation with other work at hand, and requirements for compensation to cooperate. These barriers are discussed in more detail below.

Inhibition about Participating in Litigation-Related Consultations

A hint that litigation, with its adversarial trappings, accompanies a pending consultation can inhibit a prospective contributor from engaging in a life care planner's efforts to extract present and future treatment protocols. Related attenuating factors include lack of financial incentive to fully cooperate and a perception that risk or even liability looms.

A case's litigation status should have no effect on the treatment recommendations that a contributor specifies, and a patient's reasonable and necessary rehabilitation needs should be communicated straightforwardly. The reality, however, is that contributors' real or perceived threats to consenting to a life care planner's consultation in a litigated case can greatly affect their behaviors when approached to provide life care plan recommendations.

Merely knowing that a case is in litigation can cause a prospective contributor to run for the proverbial hills. Consenting to a consultation in this context, from the frame of reference of apprehensive contributors, portends exposure of them to unwelcome, nonproductive, and potentially adverse experiences. These experiences can range from the need to encumber expenses via hiring counsel, potentially being subpoenaed to provide unwelcome and uncompensated deposition and trial testimony (with concomitant submission to potential scrutiny associated with having one's diagnoses, treatment, and billing publicly reviewed and subject to critique), to lost practice income. Life care planning consultations with treating healthcare providers tend to be particularly unwelcome in cases involving medical malpractice, where, by extension, a prospective contributor may be implicitly linked to accusations of wrongdoing.

Frankly, considering the above, who could fault a prospective contributor's reticence to engage a life care planner's request for a consultation? Yet, juxtaposed is the contributor's conundrum that a healthcare provider's obligation is to unabashedly specify treatment that a patient is reasonably expected to require.

Full disclosure should be made when contributors

question a life care planner's involvement in a patient's litigation (International Academy of Life Care Planners, 2015). If a prospective contributor asks, for example, whether a consultation is being initiated for reasons related to litigation, or who is employing the life care planner, provide straightforward answers. Deceit for sake of obtaining the necessary information to complete a life care plan is never justified.

How a life care planner responds to inquiries of the types posed above can determine a consultation's fate. A candid, disarming explanation along the lines of the following can preserve an exchange that could implode if a prospective contributor becomes too inhibited to cooperate:

I became involved in patient Y's case to assess future treatment she is reasonably expected to require. That is the reason for my consult with you. I reviewed your treatment notes and know from my examination of her that she remains under your care. Yes, her case is in litigation and future care needs are at issue. My role in her case is to promote efforts to settle it by determining her future rehabilitation needs and identifying the associated costs; hence, my conference with you.

In cases where counsel representing a defendant retains a life care planner, the life care planner rarely has access to the plaintiff's treating healthcare providers. Only with consent of plaintiff's counsel, which is often prohibitive in securing, should these types of consultations occur.

When retained by defense counsel, other retained defense experts are aware that a case is in litigation and, since the same lawyer retained both experts, are typically more accessible and accommodating in providing life care plan consultations. In these instances, consultations can be further facilitated by requests that the lawyer(s) who retained the experts inform each other about their respective involvement in the case and request cooperation with expert consultations.

Contributors' Lack of Priority in Providing Life Care Consultations and/or Being Too Busy

Although obtaining comprehensive treatment recommendations is of paramount importance to a life care planner, others may not share this perspective. In fact, some find the consultation burdensome and interfering with their routine, daily business such as patient care.

Contributors' busy schedules and professional demands apart from a case at hand can challenge a life care planner's efforts to secure comprehensive recommendations. Innate in presenting a completed life care plan is the assumption that its contributors provided sufficient time and effort to fully assess the present and future needs that a life care plan's subject will require; however, this is not always the case.

Additionally, life care planners should be mindful that many healthcare professionals do not share a life care planner's perspective regarding long-term needs assessment and planning. Surgeons, for example, tend to focus on short-term issues such as discerning pending invasive treatment options and intervening to relieve a patient's current

symptoms. After an acute postoperative follow-up period, they discharge their patients and often have nominal, if any, subsequent contact with them. This near-term perspective can cause the surgeon to focus on acute care needs, lending to less expansive recommendations—including probable future needs arising, for instance, secondary to a progression of pathologies—that a life care planner should attempt to elicit.

Life care planners who encounter significant difficulty arranging consults with busy practitioners have a Plan B option: They can pursue a consultation with a member of the practitioner's staff. In many cases, physician assistants, nurse practitioners, therapists, nurses, and other medical staff members are more accessible and approachable in evaluating treatment recommendations. A life care planner can begin the process of identifying treatment needs and protocols from these individuals and, later, as the life care plan evolves, seek supplemental input and approval from the elusive contributor.

Requirement to be Compensated

Some healthcare providers require payment in advance before consenting to a consultation. The life care planner has little, if any, recourse in this situation other than to forego the consultation or request that the life care plan referral source provide the requested payment; this should be decided by the referral source. Alternately, the life care planner can absorb the cost and defer it to the referral source.

Preemptive Measures to Facilitate Quality Contributor Input

Life care planners can optimize the window of opportunity that avails during a contributor consultation by adequately preparing for the event, and then conducting it efficiently and thoroughly. Life Care Planning Consensus and Majority Statements suggest reliance on medical/ allied health professional opinions, review of evidenced-based research and practice guidelines, as well as multidisciplinary consultation (Johnson, 2015; Preston & Johnson, 2012). A life care plan's quality depends to a large part on its author's skill in eliciting recommendations, which necessitates collaborative contributor input (International Academy of Life Care Planners, 2015). A discussion on preemptive measures that a life care planner can employ to facilitate the consultation follows.

Preparing for the Consultation

Requesting and scheduling contributor appointments via the practitioner's staff facilitates establishing a professional rapport necessary to accomplish a consultation's objectives. During the scheduling call, explain your role in identifying rehabilitation needs, specify details about the reason for the consultation, and estimate its duration. This courtesy demonstrates sensitivity and consideration for the contributor's schedule, and allows the contributor to allocate sufficient time for the consultation. It also provides an opportunity for the contributor to begin focusing on the task at hand.

Many prospective contributors look askance at cold calls—contacts initiated without any forewarning or opportunity for preparation—for life care plan input. These unanticipated and sometimes unwelcome communications can cast a negative undertone, which is counterproductive to the collaborative interaction a consultation requires. Strained communications with an irritated contributor who is, deprived of an opportunity to prepare for the interaction, may result in a cursory or otherwise less than comprehensive analyses that a life care planner seeks.

While coordinating a consultation, and in deference to a prospective contributor, the life care planner should propose alternatives to traditional work hour schedules. A contributor may prefer afterhours or weekend times to a midday work interruption. This preference is most often the case among practitioners with routinized schedules and/or high-volume practices in which interruptions cause adverse scheduling repercussions, such as those maintained by many primary care physicians.

Life care planners should anticipate that a prospective contributor, when a treating healthcare professional, will require a signed client authorization form before a consultation. In some cases, sending this document before your request for a consultation can be facilitative. This, among other things, formalizes the process, forewarns the contributor about an impending interactive contact, and signals the need to prepare for a communication with an allied professional.

Unless counsel representing a plaintiff consents, life care planners retained by defense counsel should not request that plaintiffs sign authorization forms allowing permission to speak with their healthcare providers. Likewise, when serving as an expert witness who was retained by defense counsel, life care planners should refrain from independently contacting a plaintiff's treating healthcare providers unless plaintiff's counsel grants permission, which rarely occurs.

Prepare major questions you plan to ask contributors in advance. This preparation enables you to focus on pertinent, complex treatment nuances, and facilitates a perception of you as knowledgeable, professional, and respectful of the contributor's time. Ensure you have all your intended areas of inquiry formulated before initiating a consultation. Reviewing relevant literature and becoming familiar with current treatment standards and protocols specific to the disabling problem(s) in question can facilitate your efforts.

Additionally, before beginning your consult, be aware of any treatment recommendations the contributor has made in office notes, evaluation reports, deposition testimony, or other documents. This requires you to request documents of this sort from your referral source, before your consultation, and to review them thoroughly.

Preparation for a consultation should include research into technical areas related to the types of recommendations you may elicit. If, for example, consulting with a wound care specialist about future care required due to a stage-4

decubitus ulcer, a basic understanding of debridement and flap procedures will enhance your communications and enable you to pose probing questions likely to glean information necessary to fully elicit recommendations, knowledge of potential complications, and the like. Standard IV.2 of the Standards of Practice for Life Care Planners (International Academy of Life Care Planners, 2015, p. 8) states, "The life care planner must have skill and knowledge in understanding the healthcare needs addressed in a life care plan." This standard further addresses the necessity to conduct consultations to obtain information about healthcare needs that are new or unfamiliar. Consistent with this Standard, Consensus and Majority Statements derived from Life Care Planning Summits held between 2000 and 2015, suggest reliance upon evidence-based research for recommendations in life care plans (Johnson, 2015; Preston & Johnson, 2012).

Conducting the Consultation

Imposing a basic structure while conversing with a contributor can greatly facilitate the synergistic information exchange that hallmarks an effective life care plan consultation (Pomeranz, Yu, & Robinson, 2014; Shahnasarian, 2015; Weed, 2004). Life care planners should approach the contributor consultation with both preconceived, evaluatee-specific questions and a mental template configured to elicit rehabilitation recommendations. The template should include areas inherent to a life care plan, such as residential options, skilled care requirements, recurrent evaluations and therapies, pharmacy needs, durable medical equipment, and prospective future procedures. A dialogue to elicit this information could proceed as follows:

Good morning, Dr. X. I very much appreciate you taking the time to consult with me about YYY. I am preparing a treatment plan for YYY, and I wanted to include your input. When did you last examine him? Please bear with me while I ask you a few questions about going forward. Let's start with routine office visits. How often do you recommend following-up with YYY? In reviewing your last two office notes, I learned that you have been seeing YYY at quarterly intervals. Do you anticipate any change in this frequency – let's say in the next 2 to 3 years? What about treatment modalities? What do you foresee in this area? Physical therapy, for example?

The dialogue will evolve as information about a client's treatment needs are identified and processed. Additionally, the life care planner can enrich the information exchange by asking questions about rehabilitation interventions the contributor may not have considered, and/or providing supplemental information about a patient's course, which may be unknown to the contributor. For example, during a consult with a pain management specialist about a candidate for a spinal cord stimulator, prefacing your conversation by referencing the practitioner's last treatment record and your knowledge of that history helps to establish a common denominator to proceed with questioning and obtain specific

treatment recommendations. Questions thereafter likely would include timing of a trial implant and potential permanent implant, supplemental pain management modalities, maintenance including battery changes, and contingency interventions for events ranging from the migration of device leads to failure to realize sufficient pain relief.

Contributors are apt to become annoyed with multiple follow-up queries from a life care planner, especially for reasons that include failure to initially pose seminal questions, and inefficiently or incompletely culling required information during an initial consultation. Questions perceived as trivial, common sense, or of relatively little significance in the case management of a person with a disability—for example, asking an oncology urologist about a leg bag replacement schedule for an end stage individual—can also raise this ire.

It is in the best interests of both the contributor and life care planner to accomplish consultation objectives as completely as possible during the initial contact. Complex cases, such as those involving multisystem disabling conditions with anticipated degenerative courses, may require more than one consult.

At the conclusion of a consultation, good practice dictates advising contributors that, as a professional courtesy and to ensure accurate and full understanding of specified protocols, you will provide a copy of your completed life care plan. Beyond a professional courtesy, inviting contributors to make adjustments on further review serves as a quality control measure to safeguard and often help defend

a life care plan, thereby maintaining its integrity.

For a myriad of reasons ranging from litigation-related concerns to practice operations management issues, a prospective contributor may insist that a life care planner's questions be addressed only in writing; when this happens, the life care planner should acquiesce. Assuming the input is well conceived—even though not provided ideally with opportunities to review and process it in a professional, interactive manner—the life care planner and client can benefit from every scintilla of emergent earnest input.

Figure 1 presents sample questions posed to an orthopedic surgeon. Note the specificity and level of detail the questions pursue. When reduced to communicating in writing, a life care planner is prohibited from inquiring about things such as contingencies associated with treatment outcomes and potential complications.

Interactive consultations enable a life care planner to pose follow-up questions and clarify recommendations proffered in writing. For this reason—along with the probative, collaborative, and synergistic value inherent in allied professionals' consultations—interactive life care planning communications are preferred over rote questions that are devoid of evaluatee-specific details aimed to facilitate a life care plan's customization. If the contributor's penchant, however, is to respond to written questions, the life care planner's recourse is to submit to this preference. This does not diminish the quality of the contributor's input.

Figure 1. Sample Written Questions to Elicit Life Care Plan Recommendations.

Re: JJJ
DOB: 10/25/87

Questions for Dr. N for future care needs of Ms. J

What current and future diagnostic evaluations (e.g., CT scan, X-rays, MRIs) do you recommend for Ms. J because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify schedules of any recurrent and serial diagnostic evaluations now and over the remainder of Ms. J's life.

(Note: After each set of questions, allow sufficient space for responses, approximately 9 lines.)

What current and future treatment do you recommend for Ms. J (e.g., PT, OT, exercise program) because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify treatment protocols including the frequency and duration of each protocol, both now and in the future.

How frequently do you believe Ms. J will require follow-up visits with you or another orthopedic surgeon because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please consider present and future protocols.

Do you believe that Ms. J would benefit from consultations and/or treatment with other specialists (e.g., pain management, neuropsychologist, orthopedic surgeon) because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify specialists, along with frequency of office visits.

Do you believe that Ms. J will most likely require ongoing prescriptions of medications because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please delineate present and future prescriptions including name of medication, reason for prescription, dosage, and duration.

Are injections anticipated for Ms. J because of injuries she sustained in her February 17, 2015, motor vehicle accident? If so, please specify the type, number, and locale, along with an anticipated administration schedule – both now and in the future. Please also specify whether any injections will need to be administered in a specialized facility.

Do you have any recommendations for current and/or future durable medical equipment for Ms. J because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please consider current and future needs over Ms. J lifespan, indicating when the need for different types of durable medical equipment is anticipated.

What, if any, future surgeries will be required for Ms. J because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify the procedure(s), time frame, and postoperative care protocols.

Will Ms. J require physical therapy or other specified treatment after each projected surgery, if any, because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify treatment protocols.

Are there any other rehabilitation recommendations that you have for Ms. J as you consider her medical future course because of injuries she sustained in her February 17, 2015, motor vehicle accident? Please specify treatment protocols including when interventions are anticipated.

Ethical and Practice Standards Considerations

Life care planners have a duty to develop and present comprehensive, unbiased life care plans, regardless of whether defense or plaintiff counsel retained them (International Academy of Life Care Planners, 2015). The Code of Ethics for Life Care Planners, included in the *Standards of Practice for Life Care Planners*, states:

The life care planner is expected to accurately represent any information received for a particular case. Recommendations are to have medical, rehabilitation, psychological, and case management foundations with appropriate medical specialist and treatment team collaboration when possible, with support from medical recommendations, clinical practice guidelines, and other current literature (p. 6).

Falling short of this standard for whatever reason, including insufficient input from a contributor beyond the life care planner's control, obligates practitioners to make recommendation deficiencies known.

Diplomacy and professionalism apply in making representations about difficulties that the life care planner encountered while attempting to enlist contributor compliance. Instead of testifying, for example, "Dr. Smith did not return any of the three scheduled calls I placed," an alternative is to state:

I had difficulty in my efforts to consult with Dr. Smith. I look forward to receiving any input she may have to offer and defer to her area of expertise for potential adjustments in the life care plan I prepared. In the interim, I applied my best effort to interpret her treatment plan from my review of her records.

A life care planner can assemble a life care plan devoid of a contributor's direct input by referencing available indirect contributor sources—namely, available reports, office notes, and testimony. These sources can be further used to make reasonable extrapolations about ongoing recommendations based on reviews of historical consumption rates and prognoses. A person with quadriplegia, for example, who attained maximum medical improvement and continues to use assorted durable medical equipment can reasonably be expected to have similar ongoing equipment needs.

In some cases, regardless of a life care planner's best efforts, full or partial contributor cooperation is untenable. The life care planner in these instances should alert the referral source about irregularities, deficiencies, and any other anomalies that make the life care plan less than complete and final, if this is the case. Such notification will educate involved parties of the life care planner's effort to obtain cooperation and how lack of cooperation may have impacted the plan.

Life care planners who encounter difficulties with contributor cooperation should explore alternatives necessary to complete their work in compliance with practice standards. Options available include requesting the lawyer referral

source intervene by impressing on the contributor the importance of the life care plan consultation, thereby encouraging the elusive contributor to comply. If this effort fails, another option is to refer the evaluatee to another specialist with expertise akin to the noncompliant contributor for a second opinion. This individual would then become an alternate, presumably equally qualified contributor, whom the life care planner could approach to elicit relevant recommendations.

Yet another option includes enlisting assistance from the evaluatee; when retained by plaintiff's counsel, a life care planner can request this aid. In the context of an established patient/healthcare provider relationship, a request from the plaintiff/evaluatee to the treating healthcare provider/contributor to comply with a life care planning consultation sometimes provides the nudge necessary to facilitate the process.

Summary

A life care planner's consultation with qualified contributors can greatly facilitate the process necessary to assess lifelong rehabilitation needs that a person with a disability can reasonably be expected to require. At a superficial level, the task of eliciting life care plan recommendations from contributors can appear simple and straightforward, especially when framed during adverse cross-examination.

My experience with cross-examining lawyers has included flippant barbs such as, "So, all you did was have a 10-minute chat with Dr. X, and you wrote down what he speculated the plaintiff needed – correct?" Questions of this sort are calculated on multiple levels to demean and undermine the life care planner.

The above interrogation's tenor implies the applied methodology lacked rigor and science, and does not require any expertise beyond calling a healthcare provider and acting as a scribe—tasks most laypeople and, likely, jurors in attendance could perform without any advanced training or credentialing, and without charging fees customary of those that credentialed life care planners bill. This latter innuendo aims to further impeach the life care planner as a for-hire instrument of the retaining lawyer, beholden to undeserved monetary self-gain.

Contrarily, consultations with life care plan contributors are complex and multifaceted. The life care planner's responsibility includes discretely, yet poignantly punctuating—especially when challenged—the intricacies and expertise fundamental to ensure a life care plan's integrity has been applied, along with the underlying science required to develop it.

Above all, despite the underbelly of the adversarial context in which life care plan experts are pitted against those presumably at odds with their efforts and product under development, the practitioner must at all times apply relevant practice standards. A life care planner's understanding of the

internecine dynamics operating in matters involving their work can help to preserve their credibility and contribution to the judicial process (Shahnasarian, 2001; 2009; 2015).

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