

Ethics Interface

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This column is the collaborative effort of Nancy Mitchell, Mary Barros-Bailey, Sherry Latham, Ann Neulicht, and Bobbi Dominick. 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

The night before a deposition for the plaintiff, I read through another plaintiff expert's testimony and found reference to a neuropsychology evaluation that was not a part of the records provided me. I called the attorney in the morning on my way to the deposition, which was to start in 30 minutes, and he said, "You did not have it because I did not want you to have it." I believe the neuropsychology report would have definitely changed my LCP. How should I have handled this situation?

Response

This unfortunate situation reminds us of some of the ways life care planners can plan ahead for the unexpected but also assure that their independence is preserved. An initial retention letter can outline requirements for the provision of documents. Your narrative report can also clarify that it is based solely on the documents provided, and that you reserve the right to change the opinion if additional information or documents are provided. Then, when you have the pre-deposition communication with the attorney you can remind him/her that your opinion is based solely upon the documents provided. You should have let the attorney know the impact this new information could have and its potential effect on your testimony. If the opposing attorney notes the missing report in the questions asked, and depending on the questions during the deposition, you must be forthright about the fact that you were not provided this report and that it is possible your review of this record could change your opinion. You should not state that it will change your opinion, as you cannot draw any conclusion without reviewing the evaluation. Prior to changing your opinion however, you must carefully review the referenced neuropsychology report outside of the deposition setting. It is important to reserve the right to read and analyze new information in an unpressured environment.

Our standards provide clear guidelines that our work

should be accurate and unbiased. It is your professional obligation to provide a valid and reliable life care plan whether it is helpful to the case or not. As noted, it is prudent to have a standard part of your narrative report state that you reserve the right to change your opinions if other information becomes available.

Relevant Organizational Standards

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

Introduction

II. Philosophical Overview / Goals Of Life Care Planning

The life care plan is a document that provides accurate and timely information, which can be followed by the evaluatee and relevant parties. It is a detailed document that can serve as a lifelong guide to assist in the delivery of health care services. The life care plan is a collaborative effort among the various parties, when possible, and reflects goals that are preventive and rehabilitative in nature. As a dynamic document, the life care plan may require periodic updating to accommodate changes and should have quality outcomes as its goal.

Goals of Life Care Plans:

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

- A. To assist the evaluatee 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 evaluatee's level of wellness or provide information regarding treatment requirements.
- D. To develop likely alternatives for care that take into consideration developmentally appropriate and least restrictive options for the evaluatee.
- E. To communicate the life care plan and objectives to the evaluatee 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

3. STANDARD: The life care planner performs comprehensive assessment through the process of data collection and analysis involving multiple elements and

sources.

MEASUREMENT CRITERIA:

- a. Collects data in a systematic, comprehensive, and accurate manner.
- b. Collects data about medical, health, biopsychosocial, financial, educational, and vocational status and needs.
- c. Obtains information from medical records, evaluatee/family (when available or appropriate), relevant treating or consulting health care professionals and others. If access to any source of information is not possible (e.g., denied permission to interview the evaluatee), this should be so noted in the report.

5. STANDARD: The life care planner analyzes data.

MEASUREMENT CRITERIA:

- a. Analyzes data to determine evaluatee needs and consistency of care recommendations with standards of care.
 - b. Assesses need for further evaluations or expert opinions.
6. STANDARD: The life care planner uses a planning process.

MEASUREMENT CRITERIA:

- a. Follows a consistent method for organizing data, creating a narrative life care plan report, and projecting costs.
- c. Develops recommendations for content of the life care plan cost projections for each evaluatee and a method for validating inclusion or exclusion of content.
- d. Makes recommendations that are within the life care planner's own professional scope of practice; seeks recommendations from other qualified professionals and/or relevant sources for inclusion of care items and services outside the life care planner's scope of practice.

9. STANDARD: The life care planner evaluates.

MEASUREMENT CRITERIA:

- 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 as appropriate and permitted to ensure that the life care plan is understood and properly interpreted.

From the International Commission on Health Care Certification (2015)

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

- 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.

- 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 3 - Advocacy

ICHCC Certificants shall serve as advocates for fair and balanced reporting regardless of the referral source, with the health, care, and safety of people with disabilities not to be compromised as a result of a submitted respective report.

- R3.1 The ICHCC certificants shall further use his or her specialized knowledge and skills to do no harm to the "disabled" individual with regards to the summary and conclusions of reporting, regardless of the referral source.

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.

- 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 4.3 ICHCC Certificants shall not commit the recipient of the case to any prescribed course(s) of action which may be specified in the report.

- R4.4 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 for Standards, Rules, Procedures, and Penalties (2015)

PRINCIPLES

Principle 3: Certificants will always maintain objectivity in their relationships with clients.

Principle 4: Certificants will act with integrity in dealing with other professionals to facilitate their clients' achieving maximum benefits.

Principle 5: Certificants will keep their competency at a level that ensures each of their clients will receive the benefit of services that are appropriate and consistent for the client's conditions and circumstances.

Principle 7: Certificants will obey all laws and regulations.

CCMC RULES OF CONDUCT

Violation of any of these rules may result in disciplinary action by the Commission up to and including revocation of the individual's certification.

Rule 1: A Certificant will not intentionally falsify an application or other documents.

Rule 3: A Certificant will not violate the code of ethics governing the profession upon which the individual's

eligibility for the CCM designation is based.

Rule 5: A Certificant will not violate or breach the Standards for Professional Conduct (i.e. professional misconduct).

STANDARDS FOR PROFESSIONAL CONDUCT

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.
- b) options for necessary services will be provided to the client.
- c) clients are provided with access to resources to meet individual needs.

S 23 - Unprofessional Behavior

It is unprofessional behavior if the Certificant:

- a) engages in conduct involving dishonesty, fraud, deceit, or misrepresentation;

From the CDMS Code of Professional Conduct (2015)

PREAMBLE

The primary obligation of the certificant is to exercise independent judgment in offering appropriate recommendations that consider the client's needs and the parameters of the applicable disability management system. Regardless of whether direct client contact occurs or whether indirect services are provided, certificants are obligated to adhere to the Code.

PRINCIPLES

Principle 1: Certificants shall endeavor to place the public interest above their own at all times.

Principle 2: Certificants shall respect the integrity and protect the welfare of those persons or groups with whom they are working.

Principle 3: Certificants shall always maintain objectivity in their relationships with clients.

Principle 4: Certificants shall act with integrity in dealing with other professionals.

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

Rules of Professional Conduct

SECTION 1 - Relationship with All Parties

RPC 1.03 - Competence

a. Negligence Certificants shall not: 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).

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 1.12 - 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;

Section 3 Provision of Services to Organizational Clients

RPC 3.01 - Forensic Evaluation

When providing forensic evaluations for an individual or organization, the primary obligation of certificants shall be to produce objective findings and opinions that can be substantiated based on information and techniques appropriate to the evaluation, and as required by applicable case law within the appropriate jurisdiction, which may include assessment of the individual and/or review of records. Certificants shall define the limits of their reports or testimony, especially when an assessment of the individual has not been conducted.

From the Commission on Rehabilitation Counselor Certification, Code of Professional Ethics for Rehabilitation Counselors (2017)

SECTION F: FORENSIC SERVICES

F.2. FORENSIC COMPETENCY AND CONDUCT

b. QUALIFICATION TO PROVIDE EXPERT TESTIMONY. Forensic rehabilitation counselors have an obligation to present to finders of fact the boundaries of their competence, the factual bases (knowledge, skill, experience, training, and education) for their qualifications as experts, and the relevance of those factual bases to their qualifications as experts on the specific matters at issue.

F.1. EVALUEE RIGHTS

a. PRIMARY OBLIGATIONS. Forensic rehabilitation counselors produce unbiased, objective opinions and findings that can be substantiated by information and methodologies appropriate to the service being provided, which may include evaluation, research, and/or review of records. Forensic rehabilitation counselors form opinions based on their professional knowledge and expertise, which are supported by the data. Forensic rehabilitation counselors define the limits of their opinions or testimony, especially when there is no direct contact with an evaluatee. Forensic rehabilitation counselors acting as consultants or expert witnesses may or may not generate written documentation regarding involvement in a case.

F.2. FORENSIC COMPETENCY AND CONDUCT

a. OBJECTIVITY. Forensic rehabilitation counselors are aware of the standards governing their roles in performing forensic services. Forensic rehabilitation counselors are aware of the occasionally competing demands placed upon them by these standards and the requirements of the legal system. They attempt to resolve these conflicts by making known their commitment to this Code and taking steps to resolve conflicts in a responsible manner.

e. VALIDITY OF RESOURCES CONSULTED. Forensic rehabilitation counselors make reasonable efforts to ensure the resources used or accessed in supporting opinions are

credible and valid.

f. **FOUNDATION OF KNOWLEDGE.** Forensic rehabilitation counselors have an obligation to maintain current knowledge of scientific, professional, and legal developments within their area of competence. They use knowledge, consistent with accepted clinical and scientific standards, and accepted data collection methods and procedures for evaluation, treatment, consultation, or scholarly/empirical investigations.

g. **DUTY TO CONFIRM INFORMATION.** Where circumstances reasonably permit, forensic rehabilitation counselors seek to obtain independent 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.** Forensic rehabilitation counselors have the right to accept any referral within their area(s) of expertise. They decline involvement in cases when asked to support predetermined positions, assume invalid representation of facts, alter their methodology or process without foundation or compelling reasons, or when they have ethical concerns about the nature of the requested assignments.

From the American Association of Nurse Life Care Planners- Code of Ethics 2015

Ethics Guideline

1. The nurse life care planner does not discriminate against any person based on age, gender, sexual orientation, ethnic background, religious beliefs or practices, social or economic status, lifestyle choices, functional status, health status or disability.

- An individual's differences or beliefs are respected. Personal attitudes do not influence or interfere with professional performance.
- Each individual's inherent worth, dignity and human rights are respected by the nurse life care planner without prejudice, regardless of whether the nurse agrees with or condones certain individual choices.
- The nurse life care planner performs in a nonjudgmental and nondiscriminatory manner.

3. The nurse life care planner incorporates high standards of professional conduct through the continuum of then nurse life care planning services.

- The nurse life care planner demonstrates honesty, integrity, responsibility, accountability, timeliness and respect for human dignity.
- The nurse life care planner will not knowingly engage in unethical or unlawful activities nor will they knowingly misrepresent their background or credentials, or promote personal interests for personal gain.
- The nurse life care planner remains objective and does not impose individual values on others.

5. The nurse life care planner assumes responsibility and

accountability for all actions, opinions, recommendations, and commitments.

- The nurse life care planner assumes accountability for his/her life care plan, as well as their actions, opinions and decisions.
- The nurse life care planner relies upon his/her specialized education, body of knowledge, level of competence and experience when accepting and completing an assignment.
- The nurse life care planner's professional services are delivered in a competent, concise and timely manner.

6. The Nurse Life Care Planner provides professional services with objectivity.

- The nurse life care planner demonstrates critical thinking in decisions, recommendations and opinions.
- All functions of the nurse life care planner are void of personal opinion, prejudice and conflict of interest or any such other consideration that could interfere with or influence objectivity, performance or outcome.

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