Journal of Life Care Planning, Vol.19, No. 1, (81-91)

Ethics Interface

Nancy Mitchell

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 of other organizations associated with the practice of life care planning.

Dilemma

I have worked all too often on cases where I think the opposing life care planner develops a plan that is largely biased by the referral source. I have seen many exaggerated recommendations on plaintiff plans and significant omissions and cost cutting on defense plans. At what point is it just a bad life care plan and when does it breach ethical standards?

Response

Life care planners come from different educational and clinical backgrounds, which can impact not only their individual scope of practice and work experiences but also ultimately the items they include in their life care plans. Most differences in life care planning recommendations are best left to be resolved in the court. Certainly, share your concerns with the referring attorney. The opposing attorney working with an expert witness, like a life care planner, also has ethical responsibility to assure that all relevant facts are provided to the life care planner and no misrepresentations are made.

Our standards of practice are clear that we must maintain our objectivity. Life care planners should be mindful that it is not their job to please their referral source, but rather to develop a life care plan that is safe and reasonable. Recommendations that breach standards of care or present harm to the evaluee deserve a different consideration. You should consider the report of another life care planner when the recommendations are dangerous or egregious; this should not be done to air a grievance with another life care planner. The submission of an alleged ethical violation is a serious matter for all parties concerned. Unless the situation presents imminent harm to the evaluee, confidentiality and/or other issues may require waiting until the case is settled to submit or discuss details regarding a potential ethical violation.

There are extensive organizational-specific guidelines on procedures related to filing and resolving ethical complaints. The following standards reflect only a partial listing of the related standards.

Relevant Organizational Standards

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

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 evaluee and relevant parties. It is a detailed document that can serve as a lifelong guide to assist in the delivery of health care services.

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.
   Measurement Criteria
   c. Provides a consistent, objective, and thorough methodology for constructing the life care plan, relying on appropriate medical and other health related information, resources, and professional expertise for developing the content of the life care plan.
   d. Relies on state-of-the-art knowledge and resources to develop a life care plan.
4. Standard: The life care planner uses a consistent, valid and reliable approach to research, data collection, analysis, and planning.
   Measurement Criteria:

a. Identifies current standards of care, clinical practice guidelines, services and products from reliable sources, such as current literature or other published sources, collaboration with other professionals, education programs, and personal clinical practice.
b. Researches appropriate options and charges for recommendations, using sources that are reasonably available to the evaluee.
c. Considers appropriate criteria for care options such as admission criteria, treatment indications or contraindications, program goals and outcomes, whether recommended care is consistent with standards of care, duration of care, replacement frequency, ability of the evaluee to appropriately use services and products, and whether care is reasonably available.
d.Uses a consistent method to determine available choices and charges.

5. Standard: The life care planner analyzes data.
Measurement Criteria:
a. Analyzes data to determine evaluee needs and consistency of care recommendations with standards of care.

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.
b. Develops and uses written documentation tools for reports and cost projections.
c. Develops recommendations for content of the life care plan cost projections for each evaluee and a method for validating inclusion or exclusion of content.

8. Standard: The life care planner facilitates understanding of the life care planning process.
Measurement Criteria:
a. Maintains objectivity and assists others in resolving disagreements about appropriate content for the life care plan.

From the International Commission on Health Care Certification (2020)

Preamble:

The International Commission on Health Care Certification has adopted the Code of Professional Ethics with direction and input from documents from the Codes and Standards of and statements from the following professional organizations: Commission on Rehabilitation Counselor Certification, National Association of Rehabilitation Professionals in the Private Sector, National Rehabilitation Administration Association, Virginia Board of Professional Counselors, North Carolina Board of Professional Counselors. All certified health care professionals under the International Commission on Healthcare Certification are expected to make fair and impartial assessments regarding the functional capabilities and needs of the referred individual, whether that individual is considered to be catastrophically injured or adventitiously injured with a manageable orthopaedic or neurological, or other system diagnoses. Certified Life Care Planners/Canadian Certified Life Care Planners are required to be thorough with competent research conducted for each identified category of need, and opinions and conclusions structured without regard for personal reimbursement resources.

Principle 1 - Professional and Legal Standards ICHCC certificants shall behave in a 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.
R1.4 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. Rules of Professional Conduct:
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.
R4.5 ICHCC Certificants shall not discuss with evaluee and/or referral source reputations and/or competency of colleagues in a disparaging manner, nor will they provide judgments to the evaluees regarding quality and appropriateness of treatment they may have received from other professionals.

Principle 9 - Competence ICHCC Certificants shall establish and maintain their professional competencies as mandated by their standards of practice. Rules of Professional Conduct:
R9.1 ICHCC Certificants shall function within the limits of which they are professionally qualified and competent.
R9.2 ICHCC Certificants shall continuously strive through reading, attending professional meetings and taking course instruction to keep abreast of new developments, concepts, and practices that are essential to providing the highest quality of services to their evaluees.

XI. Guidelines and Procedures for Processing Ethical Complaints

The International Commission on Health Care Certification provides the following guidelines and procedures for processing alleged violations of the Code of Professional Ethics by disability evaluators, life care planners, Medicare set-aside consultants, and geriatric care managers credentialed under the ICHCC. All allegations are heard by the ICHCC Ethic Committee comprised of persons appointed by the President. Please be aware that the hearing process should not be construed as a legal process designed to resolve legal issues, but rather an informal hearing process in which many legal structures and conventions are not observed.

Qualifying Statement:

The International Commission of Health Care Certification recognizes the interdisciplinary backgrounds and formal degree categories among its certified professional groups. Therefore, the ICHCC reserves the right to refer any allegations of ethical misconduct violations to the accused own professional organization or credentialing board for a preliminary review and investigation. This is not to say that the complaint cannot or will not be heard by the ICHCC.

1.00 Jurisdiction

1.A Qualifying Complaints: A complaint may be filed by any individual or organization (referred hereinafter as "accused"). The accused need not be credentialed by the ICHCC, but the accused must be credentialed under the ICHCC.

1.B Anonymous Complaints: The ICHCC will not honor or investigate any complaint which is not signed, or in which the accused is not identified.

1.C Non-Credentialed Complaints: If the complaint does not involve an ICHCC credentialed professional, the ICHCC will inform the accused and may refer the accused to another agency or association with proper jurisdiction.

1.D ICHCC Certification Applicants: Applicants for certification under the ICHCC are required to provide information relative to ethical actions past or pending involving other associations or credentialing/licensing organizations. Falsification of any information in this area will lead to the following disciplinary actions: 1) termination of application and notification of the falsification to relevant licensing boards, certification boards, and applicant references.

2.00 Disciplinary Actions/Options

The Ethics Committee is entitled to take any one of the following actions upon a confirmation
of the alleged infraction(s):

2.A Revocation: The Ethics Committee may revoke the credentials which the clinician obtained through the ICHCC, with notification of revocation disseminated to his or her professional organizations, certification and licensing boards.

2.B Probation: The committee may place the credentialed professional on probation, suspend certification, or may reprimand or censure the individual. The credentialed professional may be requested to cease the challenged conduct, accept supervision, or seek rehabilitative or educational training or counseling.

The Ethics Committee may implement these requests by issuing:

2.B.1 Cease and Desist Order: Require the accused to cease and desist the challenged behavior.

2.B.2 Reprimand: Reprimand when the Committee has determined that there has been an ethics violation but there has been no damage to another person.

2.B.3 Censure: Censure when the Committee has determined that there has been an ethics violation, but the damage done to another person is not sufficient to warrant more serious action.

2.B.4 Supervision Requirement: Require that the accused receive supervision.

2.B.5 Rehabilitation, Education, Training, or Counseling: The accused may be required to undergo rehabilitative counseling/therapy, additional education, training, or personal counseling.

2.B.6 Probation: Require that the accused be placed on probation. Probation is defined as the relation that the ICHCC has with the accused when the ICHCC undertakes actively and systematically to monitor, for a specific length of time, the degree to which the accused complies with the Ethics Committee's requirements.

2.B.7 Referral: Referral to a relevant association or state board of examiners for action.

2.C Reapplication: The Ethics Committee may recommend that the ICHCC deny reapplication.

2.D Notification of Other Organizations: In the event that an ICHCC credentialed individual who has violated the Code of Professional Ethics is certified by or a member of other recognized professional boards or associations or is authorized by governmental authority to practice in cognate disciplines, ICHCC shall, at its discretion, send notice of disciplinary action to each other organization. The notice shall state that the disciplinary action was pursuant to the ICHCC Code of Professional Ethics.

3.00 ICHCC Credentialed Professionals Responsibilities

3.A Cooperation: ICHCC credentialed professionals are obligated, in accordance to the ICHCC Code of Professional Ethics, to cooperated with proceedings of ICHCC for any alleged violation of the Code of Professional Ethics. If the accused voluntarily relinquishes certification or fails to

cooperate with an ethical inquiry in any way, the ICHCC shall continue its investigation, noting in the final report the circumstances of the accused failure to cooperate.
3.B Refusal of Testimony: If an accused refuses to provide testimony, the complaint may be dismissed at the discretion of the ICHCC, upon the application and agreement of the accused.
3.C Counter complaints: The ICHCC will not accept counter complaints from an accused ICHCC credentialed individual during the course of an investigation of the initial complaint. However, in unusual circumstances, the ICHCC may accept a counter complaint during the investigative period of the initial complaint.

4.00 Processing of Complaints by ICHCC
4.A Initial Action: to be taken by the ICHCC President
4.A.1 Ascertain the certification status of the accused.
4.A.2 Confer with Ethics Committee regarding the legitimacy of the complaint.
4.A.3 Review complaint with legal counsel once Committee has reviewed and affirmed the legitimacy of the complaint.
4.B Acknowledgment of Complaint: Within thirty (30) days of receipt of a formal complaint, the ICHCC President shall:
4.B.1 Direct a letter to the accused acknowledging acceptance or rejection of the complaint.
4.B.2 If a decision to accept the complaint is made, assist the Ethics Committee Chairperson to assemble the appropriate committee members.
4.B.3 If the complaint is certified in the Ethics Committee and approved by the ICHCC legal counsel, the President shall send a notice of complaint to the accused. The notice shall be: 1) sent by certified mail; 2) marked "Confidential"; 3) shall state the portion of the Code of Professional Ethics relevant to the allegations of the complaint; 4) shall enclose a copy of the complaint; 5) shall enclose a copy of the ICHCC's Code of Professional Ethics; 6) shall direct the accused to respond to the allegations in writing, within thirty (30) days and state whether the accused requests a hearing before the Ethics Committee; 7) shall inform the accused that failure to respond in writing within 30 days may result in termination of his or her certification.
4.B.4 The Ethics Review Board decision is published in writing and sent to the CLCP, CCLCP, MSCC, or CGCM via certified mail.
4.B.5 Any non-ethical complaint or inquiry regarding the certification status of an individual, or the eligibility status of a certification candidate may be made directly to the Administrator in the ICHCC Corporate Office.

5.00 Appeals Process
5.A Rights of the Appellant
5.A.1 The Appellant has the right to appeal any decision of the Ethics Review Board regarding his or her case in question
5.A.2 The Appellant has the right to appeal the Ethical Review Board's decision within a 30-day period from the date of decision publication
Process
5.B.1 The appeal is forwarded to the ICHCC corporate office and forwarded to the President.
5.B.2 The President reviews the Appeal and certifies its validity.
5.B.3 The President assembles the 3-panel Ethics Review Board comprised of CLCP/CCLCP, MSCC, or CGCM Commissioners.
5.B.4 The Ethics Review Board reviews the appeal and renders a decision regarding the validity of the earlier ruling with the facts presented in the original hearing as well as new information if submitted.
5.B.5 The Ethics Review Board may submit questions in writing to the Appellant, and responses from the Appellant must be in writing. Answers are required within a 30-day period from the date of the receipt of the certified mail certificate of the Board's written questions. Failure to respond to the Board within the 30-day period results in affirmation of the original decision. The Appellant does not have the right to ask questions of the Board.

From the CDMS Code of Professional Conduct (2015)

Preamble

Certified Disability Management Specialists (certificants) recognize that their actions or inactions can either aid or hinder clients in achieving their objectives, and they accept this responsibility as part of their professional obligation. Certificants may be called upon to provide a variety of services and they are obligated to do so in a manner that is consistent with their education, formal training, and work experience. In providing services, certificants must demonstrate their adherence to certain standards. The CDMS Code of Professional Conduct (Code) has been designed to achieve these goals….

The fundamental spirit of caring and respect with which the Code is written is based upon five principles of ethical behavior. These include autonomy, beneficence, nonmaleficence, justice, and fidelity, as defined below:

Autonomy: To honor the right to make individual decisions.
Beneficence: To do good to others.
Nonmaleficence: To do no harm to others.
Justice: To act or treat justly or fairly.
Fidelity: To adhere to fact or detail.

Special consideration to these principles of ethical behavior must be given because of the unique service provider/individual client relationship, and because the certificant is

in a position to potentially impact decisions made in favor or against the individual client.

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.

A code of professional conduct cannot guarantee ethical behavior. Moreover, a code of professional conduct cannot resolve all ethical issues or disputes or capture the richness of complexity involved in providing professional input within a moral community. Rather, a code of conduct sets forth values, ethical principles, and ethical standards to which professionals aspire and by which their actions can be judged. Disability management specialists' ethical behavior should result from their personal commitment to engage in ethical practice. The Code reflects the commitment of all disability managers to uphold the profession's values and to act ethically. Principles and rules of conduct must be applied by individuals of integrity who discern moral questions and, in good faith, seek to make reliable ethical judgments.

The CDMS recognizes that many certificants may hold more than one professional license or certification. It is the intent of the CDMS that the CDMS Code of Professional Conduct (ethics) which offers the greatest amount of protection for all parties, be in effect at any given time. At the same time, the Commission recognizes that it would not be appropriate to presume to enforce the codes of professional conduct or the code of ethics of any other certifying agency or any legal jurisdiction affecting a certificant. For that reason, the Commission will not review any allegations or violations of codes of ethics or professional conduct of any other certifying agency or legal jurisdiction.

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.

Rules of Professional Conduct

Section 1 – Relationship with All Parties

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:

c. engages in conduct involving dishonesty, fraud, deceit, or misrepresentation;

RPC 1.21 – Supervision and Consultation

e. Ethical Practice
When a certificant has reason to believe that he/she is faced with an ethical dilemma, they are required to seek out peer-to-peer consultation.

Section C – Professional Conduct Complaints

1. Persons Who May File – The Committee will accept complaints that a certificant has violated one or more Rules of the Code from the following:
    a. Certificants or members of the general public who have reason to believe that a certificant has violated the Code.
    b. The Committee Chair, when the Committee has reason to believe through reliable information received or obtained by it that a certificant has violated the Code.
2. Complaints – The Committee will accept only signed, written complaints on the CDMS Complaint Form, available on the website at www.CDMS.org. If telephone inquiries from individuals are received regarding the filing of complaints, the individuals calling will be informed of the signed, written communication requirement and asked to comply. Complainants should provide supporting documentation related to their complaint for the committee's consideration. If applicable, court testimony submitted as part of a complaint must be in the form of an official transcript of the proceedings.
3. Correspondence on Complaints – All correspondence related to a complaint must be in writing and addressed to the Executive Committee, CDMS, 1120 Route 73, Suite 200, Mount Laurel, NJ 08054 and must be marked "Confidential." This process is necessary to protect the confidentiality of the complainant and the certificant.
4. Duties of a CDMS – All certificants are pledged, in accordance with the Code, to cooperate with proceedings of the Commission for any alleged violation of the Code.
5. Timelines – The timelines set forth in these standards are guidelines only and have been established to provide a reasonable framework for processing complaints. The Committee will grant an extension of a deadline requested by a certificant or complainant only when justified by unusual circumstances. The Committee may, at its discretion, delay or postpone its review of any case.
6. Administration of Complaints – The responsibilities of the Committee with respect to professional conduct com-

plaints will include but not be limited to the following: Review complaints that have been received;

a. Determine whether the alleged behavior, if true, would violate the RCPs, and whether the Committee should accept the complaint under these Procedures;

b.If the Committee determines that the complaint contains insufficient information to make a fair determination of whether the behavior alleged in the complaint would be cause for action by the Committee, the Committee may request further written information from the complainant or other person;

c. Notify the complainant that the Committee has determined that no action will be taken; or, if action is to be taken, notify the complainant and the certificant of acceptance of the complaint; and

d. When appropriate, the Committee will arrange for legal advice with the assistance of the Commission Executive Director.

7. Withdrawal of Complaints – If the certificant voluntarily relinquishes certification or if the certificant or complainant fails to cooperate with an ethical inquiry in any way, the CDMS may, at its discretion, continue its investigation, noting in its final report the circumstances of the certificant's or complainant's failure to cooperate. The Committee, in its sole discretion, may terminate the complaint of an uncooperative complainant. Even if the complainant and certificant agree to discontinue the complaint process, the Committee may, at its discretion, complete the adjudication process if available evidence indicates that this is warranted.
8. Certificant Response – If a complaint is accepted, the certificant will be asked to respond in writing to the complaint against him/her, addressing each of the following:
    a. Acknowledge the section of the Code that he/she has been accused of having violated; and
    b. Submit any fact affidavits, documents, or written arguments that he/she wishes to be considered by the Committee in reviewing the complaint.

    The certificant will be informed, by electronic and certified mail, that if he/she wants to respond, he/she must do so in writing within thirty (30) days from the date of notification. If a certificant fails to respond in writing to a request from the Committee, the Committee may impose sanctions on the basis of the complaint alone. Should the Committee request further information from the certificant, the certificant will be given thirty (30) days from the date of the request to respond.
9. Preliminary Disposition of Complaint – After receiving the response of the certificant, Committee members will be provided copies of the response and supporting fact affidavits, documents, or written arguments provided by the certificant and others. At the next meeting or teleconference of the Committee, the Committee will discuss the complaint, response, and any supporting documentation. On the basis of the complaint and the certificant's response, the Committee must act as follows:

<u>No Violation</u>

a. If no violation is found, the case will be closed and all parties will be notified of case closure via electronic and certified mail; or

<u>Acceptance of Complaint</u>

b. If reasonable basis is found to exist for any violation alleged in the complaint, the complaint is accepted and complainant and certificant will be notified via electronic and certified mail.
c. Upon a finding of reasonable basis, the certificant may make a written request for a hearing before the Committee or the Committee, in its discretion, may initiate a hearing.
d. The certificant will have 30 days from the date of notification of acceptance of complaint to request a hearing
e. If reasonable basis is found to exist and the certificant does not request a hearing and the Committee does not initiate a hearing, the Committee will determine appropriate disciplinary action based on the information presented.

Section D – Professional Conduct Hearings

1. Initiation – If a hearing has been requested by the certificant or initiated by the Committee, the Committee Chair will schedule a hearing on the case and notify the complainant and the certificant of their right to attend the hearing with legal council. All communication to the complainant and the certificant will be conducted via electronic and certified mail. The hearing will be held before the Committee.
2. Purpose
    a. Upon acceptance of a complaint, a hearing will be conducted to determine whether a violation of the Code has occurred and, if so, to determine appropriate disciplinary action.
    b. The Committee will be guided in its deliberations by principles of basic fairness and professionalism, and will keep its deliberations as confidential as possible, except as provided herein.
3. Notice to Parties – The Committee Chair will advise the certificant and/or his/her legal counsel and the complainant, via electronic and certified mail, of the time and place for the hearing.
4. Conduct of Hearing
    a. The location of the hearing will be determined at the discretion of the Committee. Parties to the complaint, including witnesses, may participate in person or

telephonically. The Committee will provide a private room to conduct the hearing and no observers, other than appropriate Commission staff, or recording devices other than a recording device used by the Committee, will be permitted.

b. The Committee Chair administering the complaint will preside over the hearing and deliberations of the Committee. At the conclusion of the hearing and Committee deliberations, the CDMS Chair will promptly issue written notice to the certificant of the Committee's decision. The CDMS will also notify the complainant in writing of the disposition of the complaint.

c. A record of the hearing will be made and preserved until all appeals are completed or the appeals period has expired. The record will consist of a summary of testimony received or a verbatim transcript, at the discretion of the Committee. Documents presented in evidence will be retained, at the CDMS administrative office, as set forth in Section I below.

d. The certificant and the complainant will be entitled to have legal counsel or a representative present to advise and represent them throughout the hearing. Legal counsel for the Commission may also be present at the hearing to advise the Committee and will have the privilege of the floor.

e. Either party will have the right to call witnesses to substantiate his/her version of the case.

f. The Committee will have the right to call witnesses it believes may provide further insight into the matter.

g. Witnesses will not be present during the hearing except when they are called upon to testify and will be excused upon completion of their testimony and any cross- examination.

h. The Committee Chair will allow questions to be asked of any witness by members of the Committee and, at its discretion, by the opposition if such questions and testimony are relevant to the issues in the case.

i. The Committee Chair will determine what questions and testimony are relevant to the case. Should the hearing be subject to irrelevant testimony, the Committee Chair may call a brief recess until order can be restored.

j. Both the complainant and the certificant, and any witnesses and legal counsel that they may have, must pay their own expenses. The Commission will pay the expenses of the Committee members and required Commission staff.

k. If the certificant fails to appear at, or participate in the hearing, the Committee will decide the complaint and determine what testimony it will hear on record. Failure of the certificant to participate in the hearing will not be viewed by the Committee as sufficient grounds alone for taking disciplinary action.

5. Presentation of Evidence

a. The Standard Order of Testimony for Commission Hearings will be as follows, as applicable:
Convening of Hearing
Opening Statement by Committee Chair
Opening Statement by Cerificant's Attorney or Cerificant
Testimony from Complainant
Questioning of Complainant by Committee & Commission Attorney
Questioning of Complainant by Certificant's Attorney or Certificant
Testimony from Complainant's Witnesses
Questioning of Complainant's Witnesses by Committee & Commission Attorney
Testimony from Certificant
Questioning of Certificant by Committee & Commission Attorney
Questioning of Certificant by Complainant's Attorney or Complainant
Testimony from Certificant's Witnesses
Questioning of Certificant's Witnesses by Committee & Commission Attorney
Closing Statement from Certificant's Attorney or Certificant
Conclusion of Hearing

b. The Committee Chair will have the authority to modify the Standard Order of Testimony for any hearing, in the event the Committee Chair deems it necessary or appropriate.

c. The certificant may refuse to testify at a hearing and will not be found in violation of the Code simply for refusing to testify. Once the certificant chooses to testify, however, he/she may be questioned by the complainant and members of the Committee, subject to the constitutional rights of the certificant.

d. Testimony that is merely cumulative or repetitious may, at the discretion of the Committee Chair, be excluded.

e. All parties providing testimony will be required to attest to the veracity of their statements

f. Any written documentation submitted by the parties in connection with a hearing after the deadlines determined by the Committee may, at the Committee's discretion, be excluded or receive limited consideration.

6. Relevancy of Evidence

a. The Committee hearing is not a court of law and, is not required to observe the formal rules of evidence. Evidence that would be inadmissible in a court of law may be admissible in the hearing before the Committee, if it is relevant to the case. Therefore, if the evidence offered tends to explain, clarify, or refute any of the important facts of the case, it should be considered.

b. The Committee will not consider evidence or testimony for the purpose of supporting any charge that was not set forth in the notice of the hearing or that is not relevant to the issues of the case.

7. Burden of Proof
   a. The burden of proving a violation of the Code is on the complainant.
   b. Although the charge(s) need not be proved "beyond a reasonable doubt," a Committee finding that a certificant has violated the Code must be supported by substantial, objective, and believable evidence.
8. Deliberations of the Committee
   a. After the hearing is completed, the Committee will meet in a closed session to review the evidence presented and reach a conclusion. The Commission legal counsel may attend the closed session to advise the Committee if the Committee so desires.
   b. The Committee will be the sole judge of the facts and will weigh the evidence presented and assess the credibility of the witnesses. The decision of a majority of the members of the Committee present will be the decision of the Committee and the Commission. The Committee Chair will vote only to break a tie or when the Committee consists of three members.
   c. Only members of the Committee who were present throughout the entire hearing will be eligible to vote.
9. Committee Decisions
   a. The Committee will first resolve the issue of whether the certificant violated the Code. Applying the burden of proof in Subsection 7 above, the Committee will vote by secret ballot, unless all of the members of the Committee entitled to vote consent to an oral vote.
   b. In the event the Committee does not find that the certificant has violated the Code, the charges will be dismissed. If the Committee finds the certificant has violated the Code, it must then determine what actions or sanctions will be imposed.

Section E – Committee Actions and Sanctions

1. Permissible Actions and Sanctions
   a. Letter of Instruction: In the event it is determined that the Code has been violated, the Committee will consider the degree of harm and significant mitigating circumstances and may issue a letter of instruction, which is not a sanction. The Letter of Instruction will be sent to the certificant via electronic and certified mail.
   b. Sanctions: In the event it is determined that the Code has been violated, and a letter of instruction is not appropriate, the Committee will impose one or a combination of the possible sanctions that follow:
      i. Reprimand. The Committee may stipulate remedial requirements.
      ii. Probation for a specified period of time subject to Committee review of compliance. The Committee may impose remedial requirements to be completed within a specified period of time.
      iii. Suspension from CDMS certification for a specified period of time subject to Committee review of compliance. The Committee may impose remedial requirements to be completed within a specified period of time.
      iv. Revocation of CDMS certification.
   c. The penalty for failing to fulfill, in a satisfactory manner, a remedial requirement imposed by the Committee as a result of a sanction will be automatic revocation unless the Committee determines that the remedial requirement should be modified based on good cause.
2. Notification of Committee Actions and Sanctions
   a. The certificant will be given written notice within thirty days (30) of Committee decisions regarding complaints against him/her. All mailings from the Committee will be sent via electronic and certified mail.
   b. If the outcome of a complaint is unfavorable to the certificant, the certificant may appeal. Instructions and timeline for an appeal will be communicated in the notification of the Committee's action or sanction.
   c. The complainant will be given written notice of Committee decisions regarding his/her complaint after the appeal or time for appeal has expired.
   d. If a sanction has been issued, appropriate licensure, certification, or registry boards; other mental health licensure, certification, or registry boards; voluntary national certification boards; and appropriate professional associations will also be notified of the results.
   e. If a violation has been found and the Certificant's CDMS certification has been suspended or revoked, a notice of the Committee action that includes the section(s) of the Code that were found to have been violated and the sanctions imposed will be published in the Commission newsletter.

Section F – Appeals

1. Basis of Appeals – A certificant who has been found to be in violation of the Code through the decision of the Committee, may file an appeal based on one or more of the following grounds:
   a. The Committee violated its policies and procedures for processing complaints of ethical violations; and/or
   b. The decision of the Committee was arbitrary and capricious and was not supported by the materials and testimony presented by the complainant and the certificant.
2. Timeline for Requesting Appeals – After the certificant has received notification that he/she has been found in violation of one or more sections of the Code, he/she will

be given thirty (30) days from the date of such written notification to notify the Committee in writing via certified mail that he/she is appealing the decision.
3. Form of Appeal – An appeal must be in writing stating one or more of the grounds of appeal as listed in Subsection F1(a) or (b) above, and the reasons for the appeal.
4. Appeals Panel – The Commission Chair will appoint a three (3) person appeals panel consisting of at least one (1) former Commission member, who is currently a certificant, with the balance being certificants, none of whom served on the Committee at the time the original decision was rendered. The Commission's attorney may serve as legal advisor and have the privilege of the floor.
5. Standard of Review – The three (3) member appeals panel will be given copies of the materials available to the Committee when it made its decision, a copy of the hearing transcript if a hearing was held, a copy of the Committee's decision and a copy of the letter filed by the appealing certificant. The appeals panel will not accept new evidence but will review the complaint only on the basis of the existing record.
6. Decision of Appeal – The decision of a majority of the members of the appeals panel will be the final decision. The decision will be rendered within a reasonable period of time. The decision of the appeals panel may include one of the following:
   a. The decision of the Committee is upheld.
   b. The decision of the Committee is reversed. The reason for this action will be given in detail to the Committee in writing.

When a Committee decision is reversed, the complainant and the certificant will be informed in writing. This communication will be sent via electronic and certified mail. A decision of the appeals panel to uphold the Committee decision is final.

See CDMS Code of Ethics for further guidelines.

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

- Uses the current American Nurses Association (ANA) Code of Ethics for Nurses with Interpretive Statements and the AANLCP® Code of Professional Ethics and Conduct for Nurse Life Care Planners with Interpretive Statements;
- Practices in a manner that preserves and protects the individual's autonomy, dignity and rights;
- Serves as an advocate for the individual, assisting in developing skills for self-advocacy while maintaining appropriate professional role boundaries;
- Maintains a professional relationship in the healthcare, community and legal environments;
- Reports illegal, incompetent, or impaired practices, as appropriate and necessary.

From the Commission on Rehabilitation Counselor Certification. (2017)

The fundamental spirit of caring and respect with which the Code is written is based upon six principles of ethical behavior:

Autonomy: To respect the rights of clients to be self-governing within their social and cultural framework.
Beneficence: To do good to others; to promote the well-being of clients.
Fidelity: To be faithful; to keep promises and honor the trust placed in rehabilitation counselors.
Justice: To be fair in the treatment of all clients; to provide appropriate services to all.
Nonmaleficence: To do no harm to others.
Veracity: To be honest.

D.1. Professional Competence

a. Boundaries of Competence. Rehabilitation counselors practice only within the boundaries of their competence, based on their education, training, supervised experience, professional credentials, and appropriate professional experience. Rehabilitation counselors do not misrepresent their competence to clients or others.
b. New Specialty Areas of Practice. Rehabilitation counselors transitioning into specialty areas requiring new core competencies begin practicing only after having obtained appropriate consultation, education, training, and/or supervised experience. While developing skills in new specialty areas, rehabilitation counselors make reasonable efforts to ensure the competence of their work and to protect clients from possible harm.
c. Employment Qualifications. Rehabilitation counselors accept employment only for positions for which they are qualified by education, training, supervised experience, professional credentials, and appropriate professional experience. Rehabilitation counselors hire individuals for rehabilitation counseling positions who are qualified and competent for those positions.
d. Avoiding Harm. Rehabilitation counselors act to avoid harming clients, students, employees, supervisees, and research participants and to minimize or to remedy unavoidable or unanticipated harm.
e. Monitoring Effectiveness. Rehabilitation counselors continually monitor their effectiveness as professionals and, when necessary, take steps to improve performance through supervision, consultation, peer supervision, or input from other sources.
f. Continuing Education. Rehabilitation counselors recognize the need for continuing education to acquire and maintain a reasonable level of awareness of current

scientific and professional information in their fields of activity. They maintain their competence in the skills they use, are open to new procedures, and keep current with professional and community resources for diverse and specific populations with which they work.

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 evaluee. 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.
d. Conflict of Interest. Forensic rehabilitation counselors recognize their own personal or professional relationships with parties to a legal proceeding may interfere with their ability to practice ethically and professionally. Under such circumstances, forensic rehabilitation counselors are obligated to decline participation or to limit their assistance in a manner consistent with professional obligations. Forensic rehabilitation counselors identify, make known, and address real or apparent conflicts of interest in an attempt to maintain public confidence and trust, fulfill professional obligations, and maintain objectivity, impartiality, and accountability.
h. Review/Critique of Opposing Work Product. When evaluating or commenting upon the work or qualifications of other professionals involved in legal proceedings, forensic rehabilitation counselors seek to represent their differences of opinion in a professional and respectful tone, and base their opinions on an objective examination of the data, theories, standards, and opinions of the other experts or professionals.

L.2. Addressing Suspected Violations
a. Ethical Decision-Making Models and Skills. Rehabilitation counselors recognize underlying ethical principles and conflicts among competing interests. They apply appropriate decision-making models and skills to resolve dilemmas and act ethically.
b. Consultation. When uncertain as to whether particular situations or courses of action may be in violation of the Code, rehabilitation counselors consult with other professionals who are knowledgeable about ethics, with supervisors, colleagues, and/or with appropriate authorities, such as CRCC, licensure boards, or legal counsel.
c. Informal Resolution. When rehabilitation counselors have reason to believe that another rehabilitation counselor is violating or has violated an ethical standard, they attempt to resolve the issue informally by direct communication with the other rehabilitation counselor if feasible and provided such action does not violate confidentiality rights that may be involved.
d. Reporting Ethical Violations. When an informal resolution is not appropriate or feasible, is not resolved, or if an apparent violation has substantially harmed or is likely to substantially harm persons or organizations, rehabilitation counselors take further action appropriate to the situation. Such action might include referral of the matter to applicable committees on professional ethics (e.g., voluntary certification bodies, licensure boards, organizational authorities). Referral may not be appropriate when the reporting would violate confidentiality rights (e.g., when clients refuse to allow information or statements to be shared) or when rehabilitation counselors have been retained to review the work of another rehabilitation counselor whose professional conduct is in question (e.g., consultation, expert testimony).
e. Self-Reporting. Rehabilitation counselors shall immediately notify CRCC when sanctioned for violations of ethical codes by any applicable counselor licensure, certification, or registry boards; other mental health licensure, certification, or registry boards; and voluntary national certification boards or professional associations with which they are affiliated. Rehabilitation counselors notify CRCC if they are found to have violated another organization's professional code of ethics, violated laws in relation to their practice in the field of rehabilitation counseling, or are convicted of offenses that constitute violations of the Code.
f. Organization Conflicts. If the demands of organizations with which rehabilitation counselors are affiliated pose a conflict with the Code, rehabilitation counselors specify the nature of such conflicts and express their commitment to the Code to appropriate responsible officials. When possible, rehabilitation counselors work to create

change within organizations to allow full adherence to the Code. If the conflict cannot be resolved, rehabilitation counselors evaluate the risks and benefits of continued affiliation with the organization.

L.3. Conduct in Addressing Ethical Issues

a. Cooperation with Ethics Committees. Rehabilitation counselors have a working knowledge of the Code and assist in the process of enforcing it. Rehabilitation counselors cooperate with investigations, requests, proceedings, and requirements of the CRCC Ethics Committee or ethics committees of other duly constituted associations or boards having jurisdiction over those charged with a violation.

b. Confidentiality. Rehabilitation counselors who are knowledgeable of and/or party to a complaint alleging violation of the Code maintain confidentiality of all information related to the complaint and to the adjudication of the complaint, unless they are compelled to disclose information by a validly issued subpoena or when otherwise required by law or valid court order.

c. Unwarranted Complaints. Rehabilitation counselors do not initiate, participate in, or encourage the filing of ethics complaints that are retaliatory in nature, made with reckless disregard or willful ignorance of facts that would disprove the allegation, or are intended to harm rehabilitation counselors rather than to protect clients or the public.

d. Unfair Discrimination Against Complainants and Respondents. Rehabilitation counselors do not disparage or retaliate against individuals by denying services, employment, advancement, admission to academic or other programs, tenure, or promotions based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings when rehabilitation counselors are found to be in violation of ethical standards.

References

American Association of Nurse Life Care Planners. (2015). Nurse life care planning scope and standards of practice. Salt Lake City, UT: Howland, W.

Certification of Disability Management Specialists Commission. (2015). Code of professional conduct with disciplinary rules procedures and penalties. Schaumburg, IL: Author. Retrieved from:

www. http://cdms.org/uploads/files/CDMS_Code of Professional_Conduct.pdf

Commission on Rehabilitation Counselor Certification. (2017). Code of professional ethics for rehabilitation counselors. Schaumburg, IL: Author. Retrieved from https://www.crccertification.com/filebin/pdf/Final_CRCC_Code_Eff_20170101.pdf

International Academy of Life Care Planners. (2015). Standards of practice for life care planners. Third Edition. International Academy of Life Care Planners, The Life Care Planning Section of The Association of Rehabilitation Professionals. Retrieved from https://higherlogicdownload.s3.amazonaws.com/REHABPRO/Standards%20of%20Practice%20for%20Life%20Care%20Planners%2

International Association of Rehabilitation Professionals. (2015). Code of ethics, standards of practice, and competencies. Retrieved from http://www.rehabpro.org/publications/standards-ethics/12.2007.pdf/view

International Commission on Health Care Certification. (2020). Standards and examination guidelines. Retrieved from: https://ichcc.org/images/PDFs/Practice-Standards-and-Guidelines-2020.pdf