

Life Care Plans in Traumatic Brain Injury Cases: Presenting or Challenging Future Damages Calculations

WEDNESDAY, SEPTEMBER 16, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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200 Deposition Questions To Ask Plaintiff's Life Care Planner

By John Jerry Glas

We know the difference between the “real world” and the “courtroom world.” In the real world, no treating physician ever orders a life care plan, and no plaintiff ever follows one. Life care plans are courtroom creations, and life care planners are creatures of the courtroom.

Plaintiff attorneys want jurors to perceive the life care planner as part of the healthcare team, even though they ordered the life care plans, hand-picked the life care planner, and paid the invoices. Pay no attention to the plaintiff attorneys behind the curtain, but they have certain expectations. They expect life care planners to include every possible item/service, to solicit the medical opinions needed to support each item/service, and to zealously advocate for every item/service. In short, they expect... return on their investment.

Life care planners know that they are being paid to prepare a life care plan for use in litigation. They know who their client is and what their client wants. They know their professional career and income depend on repeat business and referrals. They feel the pressure to please.

If you want the jury to see the plaintiff's life care planner as a professional witness and the practice of life care planning as litigation support, you have to cut the life care plan and the life care planner down to size.

The two most common types of life care planners are: (a) the medical doctor who examines the plaintiff, prepares a life care plan, and occasionally supports the need for items in the life care plan with his/her own medical opinion; and (2) the certified life care planner who reviews the medical records, prepares a life care plan, and religiously gets a treating physician to “sign off” on the need for each item and service. The former rarely disagrees with the treating physicians; the latter is not qualified to offer an opinion on future medical needs.

Both are dangerous. Both have developed a laundry list of items and services they repeatedly include and defend in their life care plans. Both have developed a system for getting the treating physician—who never previously recommended or considered those items and services—to agree that each “belongs” in the life care plan. Both have more deposition and trial experience than the young attorneys sent to depose them. They know the questions you are going to ask before you ask them, and they know how to safely answer or avoid those questions. They will punish you for every open-ended question, and they will smile when their assistant knocks on the door and says “your time is up.”

Never overlook the importance of deposing the life care planner. Yes, the neurologist may be a “jack of all trades, master of none,” who failed to excel in her board specialty before turning to the practice of life care planning. Yes, the certified life care planner may be nothing more than a “bargain shopper,” who merely prices the items and services identified by the treating physicians. But the jury will never see them for the professional witnesses they are unless you get the admissions you need during the deposition. And that requires preparation and strategy.

The deposition of a plaintiff's life care planner will always depend on the particular life care plan and the individual life care planner. But my hope is that the following deposition questions will provide you with the information you need to decide whether and how you can: (1) emphasize the life care plan was created for use in litigation; (2) distinguish between the "real world" and the "courtroom world"; (3) expose the bias and prejudice of the life care planner; (4) question the qualifications of the life care planner; (5) attack the methodology of the life care planner; and (6) undermine the need for specific items and services in the life care plan.

I have included comments (in italics) at the start of each section to explain the purpose for that line of questioning. And I have included quotes (as a sub point) below certain questions to help you defend the need for the question, understand the significance of the deponent's response, and/or formulate follow up questions. Please remember that the specific questions in each section are meant to be illustrative, not exhaustive. This outline is only intended to be a starting point for your deposition preparation.

I. BIAS & PREJUDICE

Associate Life Care Planning with Litigation:

Life care planners want to be seen as "health care providers" and as a part of the plaintiff's "healthcare team." They don't want to be seen as "professional witnesses" or as a part of the "litigation team." Start the deposition by confirming that the practice of life care planning is a courtroom creation, and the deponent is a creature of the courtroom.

1. What is a "life care plan"?
 - a. "A Life Care plan is a dynamic document based upon published standard of practice, comprehensive assessment, data analysis and research, which provides an organized, concise plan for current and future needs within associated costs for individuals who have experienced catastrophic injury or who have chronic health care needs." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 135.
2. Did the term "life care plan" first appear in a 1981 *legal* publication which established the guidelines for determining damages in civil litigation cases?
 - a. "The original issuance of life care plans appeared in a legal publication, *Damages in Tort Actions* (Deutsch & Raffa, 1981), which established the guidelines for determining damages in civil litigation cases." Life Care Planning and Case Management Handbook (2nd ed). Boca Raton, FL: CRC Press. Deutsch, P., & Raffa, F. (1981).
 - b. "Since the term 'Life Care Plan' was published in *Damages in Tort Actions* (Deutsch & Raffa, 1981) and *A Guide to Rehabilitation* (Deutsch & Sawyer, 1985, Rev. 2005), the scope and practice of life care planning has developed and grown." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 129.

3. Did life care planning start as a practice within the field of *litigation support*?
 - a. “Life care planning has evolved from a practice primarily within the field of litigation support to application in elder care, chronic illness, and discharge planning.” International Academy of Life Care Planners, Standards of Practice, Section 3(C)(8)(b).
4. Isn't it true that Plaintiff attorneys wanted an expert to testify about the cost and frequency of future medical expenses, and *your particular* practice was born of that desire?

Establish Life Care Planner's Practice is Litigation

Explore the deponent's practice, especially if that deponent's practice is 100% litigation.

5. What portion of your current practice is life care planning?
 - a. “Twenty-three percent (22.6%) of the respondents (n=50) indicated that life care planning was a significant portion (76-100%) of their practice.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 138.
6. How many life care plans have you been “paid to prepare”?
 - a. “Of the 211 respondents providing information on the number of life care plans completed, 47.9% (n=101) had completed less than 100 life care plans and 20.4% (n=48) had completed 250 or more life care plans.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137-138.
 - b. “Among respondents, the mean number of life care plans completed in their respective careers was 187.1 (SD=305.4). Individual totals ranged from one to 2,500.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 138.
7. What percentage of the life care plans that you have been “paid to prepare” were life care plans ordered/requested by a medical doctor for a patient who was not involved in litigation?
8. What percentage of the life care plans that you have been “paid to prepare” were life care plans for a plaintiff?
9. What percentage of the life care plans that you have been “paid to prepare” were for personal injury or accident cases?
 - a. “Life care plans are prepared primarily for personal injury or accident cases, followed by medical malpractice.” Neulicht, et al. Life Care Plan Survey 2009:

Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

10. What percentage of the life care plans that you have been “paid to prepare” were *for use in litigation*?

Emphasize LCP Was Prepared For Use In Litigation:

Doctors are paid by patients to treat patients. Life care planners are paid by plaintiff attorneys to issue a life care plan and advocate for that plan in a courtroom. Make it clear that the life care plan was ordered by the plaintiff attorney & prepared “for use in litigation.”

11. Is this the life care plan that you were “paid to prepare” in this case?
[If so, mark LCP as an exhibit]

12. When/how were you first contacted about preparing a life care plan?

13. Who hired you to prepare this life care plan?

14. When hired, did you require a signed agreement or letter of engagement? [If so, mark it.]

- a. “Sixty-five percent (65.3%, n=145) of the respondents indicated that they required a signed agreement (or letter of engagement) prior to accepting a case.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

15. When hired, did you require a retainer before initiating work on a case? If not, why not? If so, what amount?

- a. “Seventy-two percent (72.1%, n=160) of the respondents reported that they require a retainer before initiating work on a case. For those who request a retainer, 27.9% (n=36) request \$1,000 or less, 18.4% (n=25) request \$1001 to \$1500, 20.1% (n=26) request \$1501 to \$2000 and 32.6% (n=42) request more than \$2000. Among those who require a retainer, the mean amount was \$1,945 (SD=\$1,140) and the amount ranged from \$25 to \$6,000.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

16. When hired, did you know you were being hired by a plaintiff attorney?

17. When hired, did you know [insert name] was a plaintiff in a lawsuit?

18. When hired, did you know you were preparing a life care plan *for use in litigation*?

Ask “The Client” Question:

If a life care planner admits that the plaintiff attorney is his “client,” the jury will never look at the deponent the same again. If a life care planner insists that the plaintiff is his “client” or “patient,” you may be able to destroy his/her credibility by asking the right follow up questions.

19. Who is your client (the plaintiff or the attorney who hired you)?
20. To whom did you send your finished life care plan?
21. To whom did you send your invoice(s)?
22. Who paid your invoice? What person/company’s name was on the check?

Establish Litigation Savvy:

Sometimes you have to put the skunk on the table. Every life care planner knows that the plaintiff attorney who hired them wants to see the most expensive (and defensible) life care plan possible. Start by establishing their litigation savvy by confirming they understand the role their life care plan in the plaintiff’s case. Resist the temptation to ask whether they were hired to prepare “the most expensive life care plan,” unless you want to hear them reply (with righteous indignation) that they were hired to prepare “the most accurate life care plan possible.”

23. When hired, did you know that the more items and services you included in your life care plan, the more money the plaintiff could *potentially* recover?
24. When hired, did you know that the greater the frequency for each item and service, the more money plaintiff could *potentially* recover?
25. When hired, did you know that the more expensive your life care plan, the more money plaintiff could *potentially* recover?

Establish Pressure To Please:

Life care planning has become a very crowded and competitive field, and most plaintiff attorneys have a very short list of life care planners. Establish why the life care planner may feel pressure to deliver a life care plan that pleases the plaintiff attorney.

26. How many certified life care planners are there in the country? In the state?
27. Is the number of certified life care planners growing or shrinking?
 - a. “In the past nine years, the number of certified life care planners has more than doubled.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 130.
28. Is the field of life care planning a competitive field?
29. Do you want plaintiff attorneys to become “repeat customers”?

30. Can “repeat business” depend on whether your life care plan *pleases* the plaintiff attorney who paid for that life care plan?
31. Can “repeat business” depend on how well you defend and advocate for your life care plan in front of a jury?
32. Do you feel pressure to please the plaintiff attorneys who pay you to prepare a life care plan?

Prior Experience with Plaintiff & Plaintiff’s Counsel/Firm:

Make it clear that plaintiff’s counsel selected the deponent and explore “why” plaintiff’s counsel made that choice.

33. Were you selected by the plaintiff or by plaintiff’s counsel in this case?
34. Did you know/meet the plaintiff prior to being retained in this case?
35. Did you know/meet plaintiff’s counsel prior to being retained in this case?
[If so, explore professional, personal, and social relationships]
36. Was this your first time being retained by plaintiff’s counsel or counsel’s law firm?
[If so, explore how counsel got his/her name]
[If not, explore the prior retentions, including prior deposition transcripts, reports, & verdicts]
37. At any time, has plaintiff counsel told you *why* he selected you for this case (gives you his/her business)?

Explore Prior Deposition Testimony:

Life care planners may give you unverifiable estimates about their retention (i.e., “75% plaintiff, 25% defense”). Where the rubber meets the road is in the frequency with which they were deposed as a plaintiff expert versus a defense expert. The percentage of times deposed as a plaintiff witness can be much higher than the percentage of times retained.

38. When hired, you knew that you could make *more* money if, after you issued your life care plan, defense counsel took your deposition.
39. What do you charge for preparing/participating in a deposition?
40. How many times have you been deposed?
41. What percentage of the time have you been deposed while serving as a “plaintiff’s witness”?
42. Do you have a list of prior deposition testimony?
[If so, mark the list as an exhibit or request the list]
[Ask witness to identify “plaintiff’s witness” or “defense witness” unless identified on list]

43. Have you ever lectured, presented, or given tips on how to testify at a deposition?
[If so, where/when?]

Explore Prior Trial Testimony:

Jurors know that the vast majority of cases settle, and they want to know why this case didn't settle. Find out how many times a life care planner has previously testified at trial and the results of those trials. If the life care planner has testified many times, and the life care plan in your case is ridiculous, the jury may conclude that the deponent has a history of having to defend ridiculous life care plans, especially if the verdicts were inconsistent with those life care plans. Nothing is better than helping the jury realize that the life care planner is to blame for your case going to trial... and for their having to serve on the jury.

44. When hired, you knew that you could make *more* money if, after you issued your life care plan, the parties proceeded to trial.
45. What do you charge for preparing/testifying at trial?
46. How many times have you been paid to testify at trial?
[If so, mark as an exhibit or request]
47. Do you have a list of prior deposition testimony?
[If so, mark as an exhibit or request]
48. What percentage of those trials were you testifying as a “plaintiff witness”?
49. Have you ever lectured, presented, or given tips on how to testify at trial? If so, where/when?

Establish File Retention & Request Transcripts:

Some life care planners retain transcripts of their depositions and/or trial testimony. Find out if they have copies of those transcripts.

50. Do you have a (closed file) document retention policy?
51. How long do you typically maintain closed files?
- a. “Respondents indicate they typically maintain closed files for seven years in both paper and electronic formats.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139-140.
52. Do you currently possess any transcripts of your deposition and trial testimony?
- a. “A majority of respondents routinely include generated work product (including correspondence), interview/case notes, their deposition and report, other experts’ reports, research notes and medical records in a closed case file. Other experts’ depositions are not routinely kept in a closed file.” Neulicht, et al. Life Care Plan

Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 140.

53. Have you previously handled any cases involving a similar life care plan to the life care plan you prepared in this case?

Explore Sources of Referrals:

The deponent's practice depends on referrals. Before exploring marketing, determine the source of those referrals.

54. What are your most common sources of referrals?

- a. "The most common sources of referrals for this sample of life care planners were attorneys (96.4%, n=214), followed by Workers' Compensation (49.5%, n=110) and insurance carriers (46.8%, n=104)." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

55. Are you listed with an expert witness service?

- a. "A majority of respondents (89.6%, n=199) reported that they are not listed with an expert witness service." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

56. Are you an active member of a professional listserv?

- a. "Eight[sic]-five percent (84.7%, n=188) of the respondents indicated they are active members of a professional listserv. Nurses and Rehabilitation Counselors indicated they are active members of a listserv in statistically equal proportions (71/82, 86.6% Rehabilitation Counselors; 87/99, 87.9% Nurses)." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.
- b. "In an era where new social media and collaboration platforms seek the limelight, the use of email lists continues to develop as discussion groups remain widely used and organizations continue to engage in email marketing. This keeps L-Soft, the Bethesda, MD, based email technology company, as busy as ever. Today, there are over 100 million LISTSERV list subscribers."
<http://www.lsoft.com/news/2019/lsoft25years.asp>

57. What percentage of the referrals you receive are from plaintiff attorneys?

- a. "Almost fifty percent of the respondents (49.55%, n=110) receive at least 50% of their referrals from plaintiff attorneys. Seventy-eight percent of the respondents (77.5%, n=172) receive 50% or less of their referrals from defense attorneys."

Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.

58. Have you/do you depend on (or benefit from) “word-of-mouth” referrals and recommendations by plaintiff attorneys?
59. Can you give us a specific example of where a local plaintiff attorney hired you because another plaintiff attorney recommended you?

Explore Marketing:

Life care planners market. They hold annual parties. They advertise in legal publications. They send out email newsletters. They lecture or present at conferences. They may even give out t-shirts, pens, and coffee mugs. Investigate their marketing efforts.

60. Have you ever emailed/mailed any newsletters to your (potential) clients?
61. Have you ever hosted any annual dinners, receptions or parties for your (potential) clients?
62. Have you ever invited/treated any (potential) clients to dinner?
63. Have you lectured, presented, or attended any conferences/webinars for attorneys?
64. How do you market your services as a life care planner?
65. Which of your marketing efforts directed specifically at plaintiff attorneys?

Investigate Most Recent Defense Life Care Plan Prepared:

Life care planners sometimes start out doing defense life care plans and later switch to the plaintiff side. Over the course of their 40 year career, they may have done 50% plaintiff work and 50% defense work, even though they haven't been hired by a defense attorney for 20 years. Always ask about the last 5 years of their practice or the last 5 life care plans.

66. Has your clientele changed during your practice (i.e., 50/50 to 80/20 ratio of plaintiff/defense)?
67. For the past five years, what has your ratio been of plaintiff/defense attorney retentions?
68. Have you ever been hired by a defense attorney to prepare a life care plan?
69. When was the last time (i.e., the most recent time) you were hired by a defense attorney to prepare a life care plan? Who hired you? What case? Were you deposed? Did it go to trial? [After deposition, try to obtain that LCP & those transcripts for comparison]

Establish Dependence on Litigation

This line of questioning is asked of all experts, but you should be careful about the wording. Make sure that you don't just ask about "preparing" the life care plan. Always ask about "preparation, presentation, or defense of life care plans."

70. What percentage of your annual income is related--in some way--to the preparation, presentation, or defense of life care plans prepared *for use in litigation*?
71. What other sources of income do you have that are not related in some way to the preparation, presentation, or defense of life care plans prepared *for use in litigation*?
72. Without your annual income for preparing life care plans *for use in litigation*, how would you support yourself (and your employees/family)?

Investigate The Business Situation:

Unless the life care planner is independently wealthy, or planning on retiring next year, investigate his business. If a life care planner's business is booming, it could be a result of their "pleasing" plaintiff attorneys. If a life care planner's business is struggling, they may feel greater pressure to please this plaintiff attorney in this specific case.

73. During the past five years, has your life care planning practice been growing or shrinking?
74. Why do you believe your life care planning practice has been [growing/shrinking]?
75. Do you want your life care planning practice to continue [growing/shrinking]?
76. What steps are you taking to make sure your practice [continues growing/ stops shrinking]?

Explore Other Litigation Support:

Want to make it clear that a life care planner is litigation support? Find out whether the deponent provides other services to help plaintiff attorneys prepare their case.

77. Have you ever been paid by a plaintiff attorney to assist in the development of deposition questions and/or trial cross-examination questions for the opposing life care planner?
 - a. "Twenty-four percent (24.2%, n=53) of the respondents have been asked to assist in the development of deposition questions for the opposing life care plan expert more than 50% of the time. Fourteen percent (14.2%, n=31) of the respondents have not been asked to do so." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 141.
78. In this case, have you been asked to assist plaintiff's counsel with the development of deposition questions for the deposition of [opposing life care planner]?
79. Have you ever been paid by a plaintiff attorney (or volunteered) to participate in the development or presentation of a day-in-the-life video?

- a. "... most respondents (56.1%, n=124) never participate in development and presentation of day-in-the-life videos." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 141.

80. In this case, have you been asked to participate in the development or presentation of a day-in-the-life video?

III. QUALIFICATIONS

Discover Medical Experience:

Not all life care planners are created equal. There is a spectrum. If the deponent is not a medical doctor, confirm the deponent lacks medical experience and qualifications. Find out whether the deponent washed out of medical school or (perhaps worse) never had any interest in caring for the sick and injured. If the deponent is a medical doctor, this line of questioning is not appropriate and should be replaced with questions establishing when/why/how the deponent shifted from the practice of medicine to the "courtroom" practice of life care planning.

81. Are some life care planners board-certified in a field of medicine?

82. Are you board-certified in any field of medicine?

83. Did you attend or apply to medical school?

84. Have you ever volunteered at a hospital or nursing facility?

Discover Nursing Experience:

Continue to define the spectrum. If the deponent is not a nurse, confirm the deponent lacks nursing experience and qualifications. If the deponent is a nurse, these questions are still appropriate but should be supplemented with questions about when/why/how the deponent shifted from nursing to the "courtroom" practice of life care planning.

85. Are some life care planners licensed or certified at the state level as a nurse?

- a. "When questioned as to whether a respondent is licensed or certified at the state level, forty-eight percent (47.7%, n=106) of the respondents indicated registration as a nurse whereas 45% (n=100) reported certification as a rehabilitation counselor or licensure as a mental health counselor." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

86. Are you a Certified Nurse Life Care Planner (CNLCP)?

- a. "... and 10.8% (n=24) are Certified Nurse Life Care Planners." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137

87. Are you licensed or certified at the state level as a nurse (LPN, RN)?

- a. "When questioned as to whether a respondent is licensed or certified at the state level, forty-eight percent (47.7%, n=106) of the respondents indicated registration as a nurse..." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 136.

88. Do you hold an active membership in the American Association of Nurse Life Care Planners?

- a. "The most commonly cited organizations in which respondents hold an active membership are: IARP (63.5%, n=141), IALCP (61.7%, n=137), Case Management Society of America (25.7%, n=57), American Association of Nurse Life Care Planners (17.6%, n=39)..." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

89. Do you hold an active membership in the American Association of Legal Nurse Consultants?

- a. "The most commonly cited organizations in which respondents hold an active membership are: IARP (63.5%, n=141), IALCP (61.7%, n=137), Case Management Society of America (25.7%, n=57), American Association of Nurse Life Care Planners (17.6%, n=39) and American Association of Legal Nurse Consultants (16.7%, n=37)." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

90. Is nursing your primary field of practice?

- a. Responses for primary health care profession follow a similar pattern: 44.6% (n=99) designated nursing as their primary field of practice and 36.9% of respondents (n=82) indicated rehabilitation counseling." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 136.

91. Have you ever worked or volunteered as a nurse?

Discover Mental Health Counselors Experience:

Continue to define the spectrum. A significant number of life care planners are certified or licensed as mental health counselors. If the deponent is not a mental health counselor, confirm the deponent lacks that experience, especially in cases involving psychological or psychiatric treatment/issues. If the deponent is a mental health counselor, these questions are still appropriate but should be supplemented with questions about when/why/how the deponent shifted to the “courtroom” practice of life care planning.

92. Are some life care planners licensed or certified at the state level as a mental health counselor.

- a. “When questioned as to whether a respondent is licensed or certified at the state level, forty-eight percent (47.7%, n=106) of the respondents indicated registration as a nurse whereas 45% (n=100) reported certification as a rehabilitation counselor or licensure as a mental health counselor.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

93. Are you licensed or certified at the state level as a mental health counselor?

94. Is mental health counselor your primary field of practice?

Case Manager Experience:

Continue to define the spectrum by asking about case manager experience. Remember that jurors may have family/friends whose care is determined by a case manager. If the deponent is not a case manager, do not let the jury confuse the deponent with a case manager. Find out whether the deponent went straight from “taking a life care planning class” to working as a courtroom life care planner. If the deponent is a case manager, these questions are still appropriate but should be supplemented with questions about when/why/how the deponent shifted from serving as a case manager to the “courtroom” practice of life care planning.

95. Do some case managers utilize the same process of developing a life care plan for their patients?

- a. “This process of developing a comprehensive plan and delineating costs has evolved over an extensive period of time and is now utilized by case managers, counselors, and other professionals in many sectors.” International Academy of Life Care Planners, 2009 Standards of Practice, Section I(B)(underline added).

96. Are you a Certified Case Manager (CCM)?

- a. “... 41% (n=91) are Certified Case Managers (CCM)...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

97. Do you hold an active membership in the Case Management Society of America?

- a. “The most commonly cited organizations in which respondents hold an active membership are: IARP (63.5%, n=141), IALCP (61.7%, n=137), Case Management Society of America...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

98. Did you serve as a case manager for the plaintiff prior to developing the life care plan *for use in litigation*?

- a. “A majority of respondents (76.0%, n=168) indicated that they have not served in the role of a case manager, counselor or therapist for a client prior to developing the life care plan.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 140.

99. Have you ever served as a full-time or part-time case manager?

Discover Rehabilitation Counselor Experience:

Continue to define the spectrum. Many certified life care planners are rehabilitation counselors. If the deponent is not a rehabilitation counselor, confirm that the deponent lacks that experience, especially in a case where the plaintiff’s ability to return to work is a disputed issue. If the deponent is a rehabilitation counselor, these questions are still appropriate, but should be supplemented with additional questions about the deponent’s (separate) vocational evaluation and opinions in the field of rehabilitation counseling.

100. Are you a Certified Rehabilitation Counselor (CRC)?

- a. “... 34.2% (n=76) are Certified Rehabilitation Counselors...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

101. Do you hold the ICHCC Certified Life Care Planner (CLCP) designation?

- a. “Seventy-four (74.3%) percent of the respondents (n=165) reported that they hold the ICHCC Certified Life Care Planner (CLCP) designation...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

102. Are you licensed or certified at the state level? If so, explain.

- a. “When questioned as to whether a respondent is licensed or certified at the state level, forty-eight percent (47.7%, n=106) of the respondents indicated registration as a nurse whereas 45% (n=100) reported certification as a rehabilitation counselor or licensure as a mental health counselor.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

103. What is your “primary health care profession” or “primary field”?

- a. “Responses for respondents’ primary health care profession follow a similar pattern: 44.6% (n=99) designated nursing as their primary field of practice and 36.9% of respondents (n=82) indicated rehabilitation counseling. Individuals also indicated a primary field of practice by writing in other areas (e.g., case management, nursing case management, rehabilitation ergonomics/economics, legal, disability management specialist and neuropsychology) and were grouped as “Other Professionals” for data analysis when compared to the “Rehabilitation Counselor” and “Nurse” groups.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 136.

Discover Professional Organizations:

The deponent’s curriculum vitae should list their professional organizations. Confirm the professional organizations that they do not hold active memberships in. Find out whether/when/why they dropped out of any professional organizations.

104. Do you hold an active membership in the International Association of Rehabilitation Professionals (IARP)? Have you ever?

- a. “The most commonly cited organizations in which respondents hold an active membership are: IARP (63.5%, n=141)...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

105. Do you hold an active membership in the International Association of Life Care Planning (IALCP)?

- a. “The most commonly cited organizations in which respondents hold an active membership are: IARP (63.5%, n=141), IALCP (61.7%, n=137)...” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

106. To what professional organizations do you belong? Why?

- a. “Respondents reported that they... belong to an average of 2.73 organizations each (n=222, SD=1.58, range 0 to 9).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

Continuing Education Unit Hours:

Determine whether the deponent has completed CEU hours that are on topics specific to life care planning. Request a list of the deponent's CEU hours. Find out whether the conferences, seminars, or topics reveal any bias or prejudice.

107. What Continuing Education Unit (CEU) hours on topics specific to life care planning do you complete (on average) each year?
- a. "Forty-seven (47.3%) percent of the respondents (n=105) complete an average of 11-20 Continuing Education Unit (CEU) hours on topics specific to life care planning each year. Another 26.6% complete an average of 21-30 hours per year, and 12.2% complete less than 10 hours per year. There was no significant difference in CEU hours between Nurses and Rehabilitation Counselors (2 (4) = 5.37, p=.25)." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

Explore Practice Of Life Care Planning:

Always make certain you know when and how life care planning became a part of the deponent's practice. Dig deep whenever a deponent switched from one practice/career to life care planning. Find out whether failure or "more money" was the reason for leaving the old practice.

108. How long has life care planning been a part of your practice?
- a. "A majority of respondents (92.8%, n=206) indicated that life care planning has been part of their practice for six years or more. Thirty-nine percent (38.7%, n=86) have performed life care planning services for 11-20 years and 17.1% (n=38) for 21 years or longer." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 137.

IV. METHODOLOGY

Determine Total Time Spent on Report:

Always start by confirming the total time spent on the report because that will limit the amount of research the life care planner could reasonably have done prior to issuing the report.

109. Did you charge by the hour or a flat fee for the preparation of this life care plan?
- a. "Eighty-nine percent of the respondents (88.7%, n=197) indicated that they (or their company) bill by the hour." Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 140.

110. Do you have time sheets (contact/activity) that reflect the time you dedicated to working on this specific case?
- a. “Fifty-seven percent (57.2%, n=127) reported that copies of all time sheets (contact/activity) are part of their file.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 139.
111. Did you issue an invoice or bill to plaintiff’s counsel that records or documents how much time you spent preparing your report? [if so, mark as an exhibit]
112. What is the average total number of hours you require to complete a life care plan?
- a. “A majority of the respondents (84.4%, n=134) indicated that the average total number of hours required to complete a life care plan ranges from 30 to 50. The mean length of time was 40.0 hours (SD=18.0 hours) and the range was 10 hours to 120 hours.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 140.
113. What total number of hours did you spend to complete *this* life care plan?
114. How much time did you spend reading/reviewing the materials sent by plaintiff’s counsel?
115. How much time did you spend writing/dictating your life care plan (or report)?

Establish what counsel did/did not send:

Most life care planners retained by plaintiff’s counsel will only look at the documents sent by plaintiff’s counsel. Few request additional materials. Establish and exploit that fact.

116. Did you tell plaintiff’s counsel what materials to send you?
117. Did you provide plaintiff’s counsel with a list of materials to send you? [If so, request list]
118. What materials did plaintiff’s counsel send you?
119. After reviewing the materials, did you request any additional materials? Why not?

Discover Existence of any Notes:

The annotations and notes of a life care planner can reveal their bias and prejudice. Picture medical records where the life care planner notes, underlines, or highlights only the subjective evidence of traumatic brain injury (i.e., “reports memory loss”) and does not note any of the objective evidence inconsistent with traumatic brain injury (i.e., “no LOC”).

120. Did you take notes while reviewing the materials? [if so, mark as an exhibit]
121. Did you annotate any documents while reviewing the materials? [if so, mark as an exhibit]

Discovery Any Research:

Few life care planners conduct literary searches. But, before asking about research, establish that the deponent has a duty to maintain records of research and supporting documentation. That will reduce the likelihood the deponent will say they “did but did not save” their research.

122. Do you have a duty to “maintain records of research and supporting documentation for content of the life care plan”?
- a. “If the Life Care Planner engages in practice that includes participation in legal matters, the Life Care Planner... Maintains records of research and supporting documentation for content of the Life Care Plan.” International Academy of Life Care Planners, 2009 Standards of Practice, Section III(C)(8)(b).

123. Did you perform any literature searches?

- a. “While a majority of the respondents do not routinely perform and utilize a literature search, practicing life care planners consult the literature when input from physicians or allied health professionals is not available (e.g., to identify potential complications).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 143.

Explore “The Interview”:

The vast majority of life care planners hired by plaintiff’s counsel will meet with the plaintiff. Make sure you know as much as possible about that interview.

124. Did you conduct an in-person interview of the plaintiff and/or family?

- a. “Respondents routinely conduct an in-person interview with an evaluatee and/or family in cases referred by plaintiff attorneys, but not in cases referred by defense attorneys. Respondents also routinely provide written documentation if the request for an evaluatee interview is denied.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 142.

125. How much time did you spend meeting with the plaintiff/family?

- a. “Respondents indicate that interviews range from one to eight hours with a mean of three hours.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 142.

126. Where did you interview the plaintiff and/or family?

- a. “A majority of respondents request a personal interview with the evaluatee verbally and utilize the evaluatee’s home for the interview.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 142.

Ask the “Physically” Question:

Some courtroom life care planners never get in their car. They read what plaintiff’s counsel sends them, draft a life care plan, and schedule a call with the treating physician to “support” each item and service. They don’t physically visit the plaintiff’s home or the recommended (very expensive) facility. Find out what plaintiff’s life care planner “physically” did after receiving the materials from plaintiff’s counsel. By focusing on what the life care planner “physically” did, you can sometimes avoid the meaningless descriptions like “assessed”, “evaluated”, “analyzed”, and “verified.”

127. Please tell me what you “physically” did between receiving the materials that plaintiff’s counsel wanted you to see and typing/dictating your report.

Explore Pre-Accident Future Medical Needs:

At least one life care planner (I won’t say who) determines a plaintiff’s current and future medical needs, but does not determine what the plaintiff’s pre-morbid (or pre-accident) medical needs were. Find out if the deponent made any attempt to determine what plaintiff’s medical needs were before the accident, and what future medical care plaintiff would likely have required, even if the accident had not happened.

128. Did plaintiff have any pre-existing medical conditions?
129. Did you make any attempt to determine what future medical care would have been “medically necessary,” even if plaintiff had not been involved in this accident?
130. Did you make any attempt to determine what future medical care would have been “medically beneficial,” even if plaintiff had not been involved in this accident?

Explore Methodology for Pricing:

Do not assume that every life care planner is diligent. Find out whether the deponent listed a range that was based on only two quotes, and find out the source for those quotes.

131. Did you obtain more than one price quote for each item?
132. Did you request usual, customary and reasonable or retail fees?
133. Did you base the cost for any items/services on current vendors? Which?
134. Did you compare the cost charged by plaintiff’s current vendors with the cost for the same/similar items and services charged by other local vendors (or the Internet)?
- a. “Respondents indicated that the most preferred resources for obtaining costs for items and services recommended in the life care plan are current vendors, followed by local vendors or providers, Internet, manufacturers, national database with geographic adjustment.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 143.

135. Did you consult any national databases for the cost of items/services?
- a. “The primary database used to research costs is *Medical Fees in the United States* (54.8%, n=92) followed by *Physician’s Fee Reference* (50.6%, n=85), *American Hospital Directory* (50%, n=84), Healthcare Common Procedure Coding System (HCPCS) (31%, n=52), Healthcare Cost and Utilization Project (HCUP) (26.2%, n=44), *Red Book: Pharmacy’s Fundamental Reference* (23.8%, n=40), and *National Fee Analyzer* (20.8%, n=35).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, *Journal of Life Care Planning*, Vol. 9, No. 4 (2010), at 143-144.
136. When listing costs for items or services, did you use any information older than one year?
- a. “When listing costs for items and services, 48.2% of the respondents (n=107) reported that they will not use information older than one year.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, *Journal of Life Care Planning*, Vol. 9, No. 4 (2010), at 144.

Confirm No Discount Rate

Few life care planners discount to present value the items/services in the life care plan, but you should still confirm.

137. In your life care plan, did you discount to present value the cost of items in the life care plan?
- a. “Eighty-three percent (83.1%, n=182) of the respondents reported that they do not discount to present value the cost of the items in the life care plan.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, *Journal of Life Care Planning*, Vol. 9, No. 4 (2010), at 141.

Distinguish Medically “Necessary” & “Beneficial”:

Some life care planners include only those items/services that will be “medically necessary.” Others will include items/services that will be “medically beneficial,” even though they have no objective criteria for weighing the benefit against the cost. A few will testify that any item which is “medically beneficial” is “medically necessary.” The following line of questioning assumes that the deponent has not limited the life care plan to the medically necessary items/services.

138. What standard do you apply when deciding whether to include an item or service in a life care plan *for use in litigation*?
139. Can an item/service be “medically beneficial” without being “medically necessary”?
140. What is your definition of “medically necessary”?
141. What is your definition of “medically beneficial”?

142. In preparing your life care plan, did you make any attempt to distinguish between those items/services that will be “medically beneficial” and those that will be “medically necessary”?
143. Did you limit your life care plan to only those items and services that will more-likely-than-not be “medically necessary” in the future? Why not?
144. Did you specifically ask [treating physician] to confirm that each item and service in your life care plan would more-likely-than-not be “medically necessary”?
145. Which items/services did you include in your life care plan that were “medically beneficial,” but were not “medically necessary” (and/or have not been confirmed as “medically necessary” by a treating physician)?

Explore Methodology For Including “Medically Beneficial”:

Some life care planners include any item/service that a treating physician says will be “medically beneficial,” without defining the degree of benefit or considering the cost involved. The following line of questions is meant to clarify that

146. Does every item/service in your life care plan provide the same exact “degree of benefit”?
147. Do different items/services in your life care plan provide different “degrees of benefit”?
148. What is your methodology for evaluating the “degree of benefit” to the plaintiff (i.e. do you identify the degree of benefit on a scale of 1 to 10)?
149. Is there a minimum “degree of benefit” that you require before you include an item/service in one of your life care plans?
150. Do you factor/consider the cost of an item/service that has been identified as “medically beneficial” when deciding whether to include that item/service in your life care plan?
151. What is your methodology for weighing the “degree of benefit” against the “degree of cost” when deciding whether to include an item/service in your life care plan?
152. Have you peer-reviewed or published your methodology for weighing (or not weighing) the “degree of benefit” against the “degree of cost”?
153. Can you cite any peer-reviewed literature in your field which adopts or endorses your methodology for weighing (or not weighing) the “degree of benefit” against the “degree of cost” when determining whether to include an item/service in a life care plan?
154. Did you omit any items/services that [treating physician] said would more-likely-than-not be “medically beneficial”? Which and why?

Identify Items/Services Proposed By Deponent:

Some life care planners are the first to propose certain items/services. Find out whether the deponent contacted the treating physician and proposed items/services never previously recommended or prescribed by the treating physician in a medical record or deposition. Find out whether the deponent called the treating physician (and how that call was handled) or mailed/mailed a draft report with a cover letter (and what was said in that cover letter).

155. Prior to your being hired by [plaintiff's counsel], had plaintiff's treating physician(s) prepared a life care plan?
156. Are there some items/services in your life care plan that had already been prescribed or recommended for plaintiff in a medical record (or deposition) prior to your being hired?
157. Are there some items/services in your life care plan that had never been prescribed or recommended for plaintiff in any medical record (or deposition) prior to your being hired?
158. Are there some items/services in your life care plan that you proposed to [treating physician] and the treating physician subsequently agreed/approved?
159. What is your methodology for proposing an item/service that had never previously been prescribed or recommended by a treating physician (i.e., do you call & ask or send a completed life care plan for their approval)?

Determine Whether Treating Physician Was Rubber Stamp:

Defense attorneys only get to see the finished life care plan. We know that the certified life care planner has likely gotten a treating physician to "sign off" on every item. What we don't know is whether that treating physician (often hand-picked by plaintiff's counsel) was a rubber stamp or actually rejected some of the deponent's proposed items/services. Find out!

160. Do you know whether the plaintiff's attorney hand-picked [treating physician] and sent plaintiff to [treating physician]?
161. Have you worked with [treating physician] before to prepare a life care plan *for use in litigation*?
162. Did you propose any items/services for the life care plan that [treating physician] rejected or reduced? Which?

Explore Professional Standards:

Different life care planners will give a different definition when asked whether there are "standards of practice" for life care planning. Go fishing.

163. What is a "standard of practice"?
 - a. "Professionals involved in the specialty practice of life care planning have developed *Standards of Practice* (Preston, 2002; Reavis, 2002; McCollom, 2006; International

Academy of Life Care Planners, 2006; Fick & Preston, 2006) and focused on the consensus building with regards to methods and protocols through biennial Summits (Weed & Berens, 2000; Berens, 2002; Riddick-Grisham, 2003; 2006; Berens, 2004; Deutsch & Allison, 2004; Preston, Pomeranz, & Walker, 2008; Berens, Johnson, Pomeranz, & Preston, 2010).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 132.

164. Have professionals involved in the specialty practice of life care planning developed standards of practice?

- a. “Professionals involved in the specialty practice of life care planning have developed *Standards of Practice* (Preston, 2002; Reavis, 2002; McCollom, 2006; International Academy of Life Care Planners, 2006; Fick & Preston, 2006) and focused on the consensus building with regards to methods nad protocols through biennial Summits (Weed & Berens, 2000; Berens, 2002; Riddick-Grisham, 2003; 2006; Berens, 2004; Deutsch & Allison, 2004; Preston, Pomeranz, & Walker, 2008; Berens, Johnson, Pomeranz, & Preston, 2010).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 132.

165. What standards of practice exist?

166. What standards of practice do you follow?

Duty to “Accurately Represent”

This line of questioning is intended only to clarify that, regardless of the standard of practice (if any) adopted by the deponent, the deponent has a duty to accurately report a plaintiff’s future medical needs.

167. Do you have a duty to accurately report a plaintiff’s future medical needs?

Explore “Reasonable Degree of Professional Certainty”:

Most life care planners know the magic words. Force the deponent to define those magic words!

168. What does the expression “reasonable degree of professional certainty” mean to you?

169. Can you say with a reasonable degree of professional certainty that the plaintiff will require each and every item/service included in this life care plan?

170. Did you omit any items/services from the life care plan because you could not say with a “reasonable degree of professional certainty” that they would be required?

171. Are you “guaranteeing” that the plaintiff will require each and every item/service in this life care plan?

Establish Planner Does Not “Typically” Check Accuracy of LCPs:

After the litigation ends, most life care planners do not check to determine whether their life care plan turned out to be accurate five months later, let alone five years later. Exploit that fact!

172. Do you care about the accuracy of the life care plans you prepared *for use in litigation*?
173. Have you ever been wrong in one of your life care plans?
174. Have you ever issued a life care plan that include items or services the plaintiff never required?
175. After litigation ends, do you *typically* schedule a follow up visit with the plaintiff to determine whether the plaintiff is using all of the items and services listed in your life care plan?
176. After litigation ends, do you *typically* research whether the life care plan you prepared *for use in litigation* turned out to be accurate or inaccurate?
177. After litigation ends, do you *typically* research whether the life care plan you prepared *for use in litigation* resulted in a plaintiff being awarded vastly more money than the plaintiff actually required?
178. Why don't you research the accuracy of your life care plans? Is it because nobody pays you to check the accuracy of your life care plans?

Exploit Any Unnecessary Items

Pick a ridiculous item or service included in the life care plan, like a “gym membership” or a “private trainer” that is listed “for life.” Find out how many times the life care planner has included that item in prior life care plans. Confirm that the life care planner has no idea how often that item was needed or utilized during the first five (5) years after litigation ended. Confirm that the life care planner has no idea how many prior clients utilized that item or service after the age of 50, 60, and 70.

179. In your life care plan, did you include [*ridiculous* item/service] at [cost] for [# of years]?
180. In this case, does that mean you have reserved [cost] for [*ridiculous* item/service] until the plaintiff is [life expectancy] years old?
181. In how many life care plans have you included that [*ridiculous* item/service] until that age?
182. How many times have you checked to determine how frequently a plaintiff actually utilized that [*ridiculous* item/service] during the 1st year (or the first 5 years) after litigation ended?
183. How many times have you checked to see whether a plaintiff was actually utilizing [*ridiculous* item/service] after the age of 50, 60, and 70?

Establish Lack of Follow-Up With Plaintiff/Family:

Life care planners know how to engage and connect with the jury. They attend CLEs to become more likeable witnesses. They know what to say, and they know how to say it with empathy. But actions speak louder than words. Find the questions you need to emphasize that the life care planner saw the plaintiff only one time, issued the life care plan, got paid, and moved on.

184. Have you ever served in the role of a case manager, counselor or therapist on a case after completing a life care plan?
- a. “Likewise, a majority of respondents (77.5%, n=172) reported that they have not served in the role of a case manager, counselor or therapist on a case after completing a life care plan, nor served in the role of a case manager, counselor or therapist on a case after another person completed a life care plan (65.3%, n=145).” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 140.
185. Since issuing your life care plan *for use in this litigation*, have you served as a case manager, counselor or therapist for the plaintiff?
186. Did you provide a copy of the life care plan to the plaintiff and/or family?
- a. “Sixty-one percent (61.4%, n=136) of the respondents never provide a copy of the life care plan to the evaluatee and/or family; 5.0% (n=11) routinely do so.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 141.
187. Did you review the life care plan with the plaintiff and/or family?
- a. “Twenty-nine percent (28.8%, n=64) of the respondents reported that they review the life care plan with the evaluatee and/or family greater than 50% of the time, while 27.5% (n=61) never do so.” Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 141.
188. Since issuing your life care plan *for use in this litigation*, have you contacted the plaintiff/family to determine whether the life care plan is being followed?
- a. “Sixty-one percent (60.47%, n=104) of responding life care planners have not contacted evaluatees/families to determine if the life care plan is being followed. Among those who have made such contacts, the mean number of calls was 21.4 (SD=38.3, median=8.0). Neulicht, et al. Life Care Plan Survey 2009: Process, Methods and Protocol, Journal of Life Care Planning, Vol. 9, No. 4 (2010), at 141.
189. Since issuing this life care plan, have you seen or spoken with the plaintiff?

[For Insured/Affluent] Contrast Past Medicals with Life Care Plan:

This is a dangerous line of questioning. If you ask a life care planner who included \$20,000 for physical therapy in 2019, why plaintiff did not spend \$20,000 on physical therapy in 2018 or 2019, the answer may be that “plaintiff could not afford it.” But if you know the plaintiff is affluent and/or their insurance would have paid for physical therapy, this line of questioning can emphasize the difference between the “courtroom world” where the life care planner says the plaintiff needs \$20,000 for physical therapy, and the “real world” where the plaintiff does not.

190. In your life care plan, did you include [*unused* item/service] at [cost] for [# of years]?
191. To be clear, your life care plan included [cost] for [*unused* item/service] for the [# of months/years since life care plan was issued], correct?
192. Did plaintiff spend [cost] for [*unused* item/service] for [the year *before* the date of the life care plan]? Why not?
193. Did plaintiff spend [cost] for [*unused* item/service] for the [# of months/years since date of the life care plan]? Why not?
194. Since issuing this life care plan, have you made any effort to determine whether, *in the real world*, the plaintiff has *actually* been utilizing all of the items and services in your life care plan? Why not?
195. Since issuing this life care plan, have you made any effort to determine whether, *in the real world*, the items and services you listed have *actually* cost what you predicted they would cost? Why not?

No Legal Accountability For Life Care Planners:

Some life care planners have no accountability. Determine whether the deponent is a member of any organizations that have standards and mechanisms for holding members accountable.

196. When you are wrong, and you issue a life care plan that includes items and services a plaintiff *does not* need and *never* uses, would you personally pay that money back to the defendants?
197. When you are wrong, and you issue a life care plan that includes items and services a plaintiff *does not* need and *never* utilizes, are you liable (legally responsible) for paying that money back to the defendants?
198. Is there any board, agency, organization, or bureau that a defendant can “report you to” or “file a complaint with” when you make a mistake that costs them millions of dollars?
199. Does a defendant have any legal remedy or way of holding you accountable when you make a mistake that costs them millions of dollars?
200. How can you be held accountable when you violate a standard of practice?