

**The Kentucky Bar Association  
Civil Litigation Section presents:**

## **Fundamentals of Life Care Planning**



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# Fundamentals of Life Care Planning

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## **PRESENTER BIOGRAPHY**

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With over 30 years of experience as an attorney, legal educator, litigation support, and business owner, Ms. Johnson serves as founder and leader of PMR Life Care Plans, LLC. With a team of renowned, board-certified adult and pediatric physical medicine and rehabilitation physicians, orthopedic surgeons, and neurologists. PMR Life Care Plans, LLC, offers forensic consultation, expert medical opinions, and life care planning services on a nationwide scale. PMR's mission-driven approach is the cornerstone of their distinction in providing damages valuation services. They collaborate with attorneys and insurance companies to impartially assess future medical care, loss of earnings capacity, and loss of household services for individuals affected by chronic or catastrophic injuries. Ms. Johnson has previously served as assistant county attorney in the Jefferson County Attorney's Office, director of public affairs for the Kentucky Justice Association, and assistant professor of law at Northern Kentucky University. She received her B.A. from Georgetown University and her J.D. from the University of Kentucky J. David Rosenberg College of Law. Ms. Johnson is a member of the Kentucky Bar Association and currently serves as Vice Chair of the KBA Civil Litigation Section.

## FUNDAMENTALS OF LIFE CARE PLANS: HISTORY, OVERVIEW, FOUNDATIONS

Kathleen Gormley Johnson, Esq.

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### I. **LEARNING OBJECTIVES: AT THE END OF THIS WEBINAR, THE ATTORNEY WILL HAVE AN UNDERSTANDING OF THE FOLLOWING:**

- A. The Definition of “Life Care Planning” in the Medical Setting vs. the Legal Setting
- B. Standards and Methodology of Life Care Plans
- C. Components of Life Care Plans

### II. **KRE RULE 702 TESTIMONY BY EXPERTS**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the proponent demonstrates to the court that it is more likely than not that:

- (1) The testimony is based on sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The **witness’ opinion reflects a reliable application of** [~~witness has applied~~] the principles and methods [~~reliably~~] to the facts of the case. [Emphasis added]

### III. **KRE 702 REQUIRES THAT AN EXPERT “WITNESS’ OPINION REFLECTS A RELIABLE APPLICATION OF THE PRINCIPLES AND METHODS TO THE FACTS OF THE CASE**

- A. The court may consider the specialized knowledge at the admissibility of the expert opinion and when considering the weight of the report.
- B. What is the specialized knowledge of a physiatrist/PM&R physician?

American Academy of Physical Medicine & Rehabilitation (AAPM&R) defines physiatry/physical medicine & rehabilitation as:

[T]he specialty that aims to enhance and restore functional ability and quality of life to those with physical impairments or disabilities affecting the brain, spinal cord, nerves, bones, joints, ligaments, muscles, and tendons. A physician having completed training in this field is referred to as a physiatrist. Unlike other medical specialties that focus on a medical “cure,” the goals of the physiatrist are to maximize patients’ independence in activities of daily living and improve quality of life.

**IV. HOW DO YOU KNOW IF IT'S "RELIABLE" OR A "RELIABLE APPLICATION"?**

Reliable principles and methods are the principles and methods utilized in treating clinical patients and teaching/training residents and fellows.

**V. ARE THE FACTS AND DATA SUFFICIENT?**

Sufficient facts and data are the same facts and data used in clinical practice. Is it a fact or data evidence that is used in the clinical setting?

**VI. WHAT IS A LIFE CARE PLAN IN THE LEGAL SETTING?**

- A. Comprehensive documents that objectively identify the residual medical conditions and ongoing care requirements of ill/injured individuals and quantify the costs of supplying these individuals with requisite, medically related goods and services.
- B. Medical Damages Evaluation
- C. Goal is to assist finder of fact with determining projected future medical damages.

**VII. HISTORY OF LIFE CARE PLANS: 1970S AND NOW**

**VIII. TODAY: LIFE CARE PLAN VS. FUTURE COST PROJECTION**

**IX. WHAT CAN BE IN A LIFE CARE PLAN? LOOK AT THE PAST TO SEE THE FUTURE.**

- A. Standards and Methodology
- B. Sufficient Facts and Data

American Academy of Physician Life Care Planners [AAPLCP] Standard 2: Discovery, Collection & Analysis: This is the process the physician life care planners engage in when collecting and analyzing information about a subject and his/her condition.

1. Physician life care planners employ a methodological and comprehensive approach to the discovery and collection of relevant information about a subject and his/her condition.
2. Physician life care planners review and consider all available medical records, and other relevant and/or available documentation.
3. Whenever possible, and/or practicable, physician life care planners perform personal interviews and examinations of subjects to collect information which supports the objective findings included in the medical records and other relevant documents, and to discover objective findings which may not be identified in the medical records and/or other relevant documents.
4. Physician life care planners endeavor to discover and consider, in addition to other relevant information: general information about the subject; the

subject's cause of relevant injury/illness; diagnostic studies undergone by the subject; procedures undergone by the subject; observational documents about the subject; documented opinions from the subject's treating physicians; subjective complaints obtained during the personal interview and examination of the subject which correlate with the objective findings in the subject's medical records; the subject's biological symptoms and systems; and the subject's health history, social history, medication history, etc.

- C. Past medical history – any pre-existing conditions? If yes, were the pre-existing conditions exacerbated, aggravated, or exaggerated? Review of past medical expenses.
- D. Diagnostic Conclusion/Causation; Independent Medical Examination
- E. Differential Diagnosis
- F. Impairment, Restrictions, Impact on Vocation and Avocation/Consequence Circumstance
- G. Future Treatment Recommendations
- H. Environmental Modifications
- I. Activities of Daily Living [ADLs]
- J. Life Expectancy
- K. Future Costs

**X. HOW DO YOU DETERMINE COST? WHAT IS THE INDUSTRY STANDARD?**

- A. AAPLCP Standard 4: Quantification

Quantification describes the quantification of future medical requirements in life care plans. When quantifying future medical requirements, physician life care planners:

1. Reference/exhibit all variables used to perform their calculations.
2. Describe the methodology used to perform all calculations, so as to make their cost analyses independently replicable/disprovable.
3. Quantify the total cost of the future medical requirements in their life care plans.

- B. Context 4 Healthcare

C. Percentile vs. Percentage

1. Percentiles are often more useful for interpreting test results than percentages. For example, if you know someone scored in the 75th percentile on a test, you know that they did well on the test, even if you don't know how hard the questions were or what the average score was.
2. The 80th percentile rule is a consumer protection rule that requires insurance companies to pay the going rate for medical bills in a community, rather than an arbitrarily low amount. In [CFR §17.101](#) Collection or Recovery by VA for Medical Care or Services Provided or Furnished to a Veteran for a Non-service Connected Disability, the 80th percentile is used.

**XI. WHAT DOES THE FUTURE HOLD FOR LIFE CARE PLANS?**

- A. Medicine is no longer community based but relies on national standards.
- B. Physicians, physiatrists (PM&R), and other specialties are more involved; new certification.
- C. Impact of Technology
- D. Increased Use of Future Cost Projections
- E. Use throughout Litigation: Pre-lit through Trial
- F. Engaging Earlier with a Physician
- G. Mediation Tool