

In The
Supreme Court of the United States

GIANINNA GALLARDO, AN INCAPACITATED
PERSON, BY AND THROUGH HER PARENTS AND
CO-GUARDIANS PILAR VASSALLO AND
WALTER GALLARDO,

Petitioner,

v.

SIMONE MARSTILLER, IN HER OFFICIAL CAPACITY
AS SECRETARY OF THE FLORIDA AGENCY
FOR HEALTH CARE ADMINISTRATION,

Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Eleventh Circuit**

**BRIEF OF AMERICAN ACADEMY OF PHYSICIAN
LIFE CARE PLANNERS AS AMICUS CURIAE
IN SUPPORT OF NEITHER PARTY**

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QUESTION PRESENTED

Whether the federal Medicaid Act provides for a state Medicaid program to recover reimbursement for Medicaid's payment of a beneficiary's *past* medical expenses by taking funds from the portion of the beneficiary's tort recovery that compensates for *future* medical expenses.

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STATEMENT OF AMICUS INTEREST¹

The American Academy of Physician Life Care Planners (“AAPLCP”) is a professional organization of board-certified physicians and other qualified clinical and forensic professionals dedicated to the practice and advancement of life care planning. AAPLCP is committed to the advancement of life care planning research, publication, methodologies, standards of practice, ethics, and education, as well as the certification of qualified physicians. Its mission “is to champion the practice of life care planning by physicians, to elevate and support the discipline of life care planning through physician participation, and to educate physicians, the life care planning community, and the public about physicians’ central role in life care planning.” Joe G. Gonzales, M.D., *A Physician’s Guide to Life Care Planning: Tenets, Methods, and Best Practices for Physician Life Care Planners* 5 (1st ed. 2017).

AAPLCP takes no position on the question presented. Because the question addresses future medical requirements and their associated costs, however, AAPLCP believes its knowledge regarding how future medical requirements are properly formulated and quantified will be helpful to this Court. Physician life care planners follow relevant, reliable, regularly-employed, and peer-reviewed methods, tenets, and

¹ No counsel for either party authored this brief in whole or in part. No person other than the AAPLCP made a monetary contribution to the brief’s preparation or submission. Both parties consented to the filing of the brief in accordance with Supreme Court Rule 37.3(a).

principles to determine an injured individual's diagnostic conditions, disabilities, symptoms, probable durations of care, future medical requirements, and associated costs. To do this, they rely upon their education, training, skill, and professional experience as practicing medical doctors, many of whom are Board Certified Physical Medicine and Rehabilitation specialists. Ethical tenants bind physician life care planners to formulate their opinions pertaining to future care as reliably as possible and to avoid any form of bias or advocacy.

The AAPLCP is interested in this case because it implicates the accuracy and credibility of future care projections. Physician life care planners are regularly called upon in cases like Ms. Gallardo's to assess an injured party's medical conditions, as well as future medical requirements and costs. Life care plans are not formulated based upon guesses or speculation; rather, they are formulated based upon a reasonable degree of medical certainty.



SUMMARY OF ARGUMENT

In preparing for trial or settlement discussions, parties seeking to prove damages often consult with physician life care planners. The expert analysis that the physician life care planner undertakes may become the subject of expert testimony at trial, or it may inform a party's settlement demands and negotiations. In such cases, the formulation of future medical

requirements and associated costs is not a best guess or estimate.

Nor are such formulations arbitrary. Guided by experiential knowledge, a host of organizational requirements, commitment to accuracy, and ethical constraints compelling a lack of bias, the future medical requirements formulated by physician life care planners are reliable projections. Thorough and transparent reviews of medical records, examinations of subjects, and calculations regarding the future needs of subjects ensure that the determination of future needs is made within a reasonable degree of medical certainty.

Advancements in medical care mean gravely ill or injured persons may live much longer than was the case even in the latter half of the twentieth century, particularly if these persons have the means of obtaining appropriate care, therapies, and treatment. Society requires in many instances that the stakeholders be able to plan for the expenses associated with such long-term needs, regardless of whether the requirement arises due to litigation, estate distribution or planning, compensation, or a host of other circumstances. In those circumstances, the expertise of a physician life care planner is instrumental. Indeed, life care planning is a matter of expert analysis similar to predictions of future economic needs or damages made in other fields.



ARGUMENT

Life care planning is the field of expertise that helps individuals and organizations plan for the future care of a disabled, ill, or injured person in a wide variety of contexts, ranging from financial and estate planning to determining future damages in litigation. This case arises in the latter context, where life care planning experts help parties, juries, and courts determine an individual's future medical requirements and the costs thereof. Even where a case does not reach trial, the calculations by life care planners can provide the "objective benchmarks" needed "to make projections of the damages the plaintiff likely could have proved had the case gone to trial." *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 642 (2013). In cases like this, the expert analysis of a physician life care planner provides the objective, scientific foundation for determining compensatory economic damages associated with an injured party's future medically-related needs.

I. Physician life care planning is a practice guided by specific, relevant, reliable, and peer-reviewed methods, as well as ethical guidelines.

Physicians and other rehabilitation professionals have long been called on to answer basic questions regarding care requirements when there are ongoing medical conditions that will require future treatment or care. Joe G. Gonzales, M.D., *A Physician's Guide to Life Care Planning: Tenets, Methods, and Best Practices for Physician Life Care Planners* 6 (1st ed. 2017). Those basic questions regard a subject's diagnostic

condition, future medical requirements, and the costs of those requirements over time. *Id.*

The AAPLCP endeavors to elevate the discipline of life care planning through research and publication, continuous advancement of life care planning methodologies, standards and practices, and the training and education of qualified physicians. *Id.* Today, life care planners may be certified in the field. International Commission on Health Care Certification (ICHCC), *Certified Life Care Planner*, <https://www.ichcc.org/certified-life-care-planner-clcp.html> (last visited Sept. 7, 2021). To qualify, an applicant must be a qualified health care professional and have extensive training and experience in life care planning. *Id.* Further, the Certified Physician Life Care Planner Certification Board offers advanced certification (Certified Physician Life Care Planner CPLCP) for physicians who possess a Certified Life Care Planner certification from the ICHCC, and who are Board Certified in Physician Medicine and Rehabilitation by the American Board of Physical Medicine and Rehabilitation, one of twenty-four medical specialty boards that make up the American Board of Medical Specialties.

Far from an arbitrary or manipulable analysis, life care planning is defined as the

process of applying methodological analysis to formulate diagnostic conclusions, and opinions regarding physical or mental impairment and disability for purpose of determining care requirements for individuals with permanent

or chronic medical conditions; and quantifying these requirements in monetary terms.

Gonzales, *supra*, at 13. Guesses or arbitrary estimates never suffice as each of these conclusions, opinions, and quantifications must be determined to a threshold reasonable degree of medical certainty. *Id.* at 18.

In making these determinations, physician life care planners are guided by The Clinical Objectives of Life Care Planning:

- (1) Diminish or eliminate physical and psychological pain and suffering.
- (2) Reach and maintain the highest level of function given an individual's unique circumstance.
- (3) Prevent complications to which an individual's unique physical and mental conditions predispose them.
- (4) Afford the individual the best possible quality of life in light of their condition.

Id. at 15.

To ensure these objectives are met, the AAPLCP encourages the preparation of life care plans in accordance with certain tenets, methods, and best practices. Thus, life care plans should have a foundation that is credible and transparent; reflect a superstructure containing a set of facts, opinions, and conclusions; and incorporate the key mechanics of linearity and continuity. *Id.* at 21.

The facts section of a life care plan is derived from the physician life care planner's thorough review of medical records and other documents, personal interviews with the subject and other interested parties, and examinations of the subject. *Id.* at 25. In turn, opinions regarding the long term needs of a subject are derived from the physician life care planners' diagnostic conclusions, consequent circumstances, and future medical requirements. *Id.* at 28.

Having assessed the facts and formed these opinions, a physician life care planner then performs a quantitative assessment that contains a cost analysis and a definitive value for future medical expenses. *Id.* at 31. Courts are well-versed in determining the reliability of such assessments, finding the methodology approved by the AAPLCP to satisfy the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *E.g.*, *Ruiz v. Minh Trucking, LLC*, No. SA-19-CV-01191-DAE, 2020 WL 6265084, at *3 (W.D. Tex. Oct. 23, 2020); *see also March v. United States*, No. 3:17-cv-2028 (VAB), 2021 WL 848723, at *4-5 (D. Conn. 2021) (finding life care planner's opinions employing standards of the International Academy of Life Care Planners satisfied *Daubert*). An opposing party, of course, remains able to address perceived weaknesses of these assessments on cross-examination. *Ruiz*, 2020 WL 6265084 at *3; *March*, 2021 WL 848723 at *5.

Recognizing that mistakes in analyses could jeopardize the four objectives and harm subjects, standards of practice have developed among life care planners. Gonzales, *supra*, at 6. Thus, "all Certified

Physician Life Care Planners (CPLCP) must comply” with “AAPLCP’s Standards of Practice, Ethics, and Professional Conduct,” which “define the professional standards and ethical conduct.” *Id.* at 15.

The primary tenets of these standards are objectivity, truthfulness, accuracy, and professionalism. *Id.* at 14. Physician life care planners are prohibited from advocating for individuals, positions, beliefs, or desired legal outcomes; avoid any partiality in their opinions; and cannot take any steps that do not serve producing conclusions that are truthful, accurate, and objective. *Id.* They are to approach each subject with an unbiased perspective focused only on the four clinical objectives. *Id.*

These ethical requirements ensure not only the reliability of physician life care planner opinions, but also that the subject receives sufficient care in the future:

A life care planner can possess the greatest degree of capacity in the world, but without a high degree of ethical integrity, a life care planner is worthless; or worse, he is potentially harmful.

Life care planning has no room for moral relativism.

Id. at 24.

II. Physician life care planning grew out of a medical field and continues to be used outside of personal injury litigation.

Though life care planners are often called on to provide their expertise in litigation, the tenets, methods, and best practices to which they conform are extremely similar to those used by practicing physiatrists. Gonzales, *supra*, at 9. Physiatrists are medical doctors that have training and experience in providing medical and rehabilitative services to individuals with disabilities, dealing with individuals who have catastrophic functional problems, and anticipating patients' long term needs. *Id.* at 16. They "are experts in the medical and physical treatment of disabling illness and injury," providing a "holistic and comprehensive . . . approach to the assessment of medical and rehabilitation requirements," making them "well suited to determine what medical conditions remain relevant to a subject's future care considerations." *Id.* at 9. Physiatry has long been recognized as a discipline uniquely qualified to provide scientific and medical foundations essential to developing life care plans. *Id.*

Physician life care planners are different from other treating physicians, the latter of whom must focus on their patients' current courses of treatment from visit to visit. *Id.* at 7. Treating physicians often specialize in one area of illness, injury, or care, a focus which may hinder their ability to assess the total impact of an injury or illness. *Id.* at 10. Nor are they familiar with life care planning methodology. *Id.*

That methodology is of use in arenas beyond the type of litigation at issue here. Today, medical science enables people with catastrophic injuries and grave illnesses to live longer. Because society often demands the costs of that care be calculated at the front end, life care planning is not reserved for personal injury or medical malpractice cases. As the AAPLCP recognizes, life care plans have a growing value in purely medical contexts like case management, elder care, and discharge planning. *Id.* at 7. Life care plans are also an important aspect of estate planning to ensure there will be sufficient assets to cover, for example, a disabled child's future needs. Even in the courtroom, life care plans are useful well beyond tort litigation. For example, they may be important in a divorce case for determining the future medical costs of a child or spouse, which may be a central issue in the division of marital assets and imposition of child or spousal support obligations. *E.g., In re Marriage of Zweig*, 798 N.E.2d 1223, 1227 (Ill. Ct. App. 2003).

The government might use the services of a life care planner as well. In one example, both parties consulted life care planners to estimate future expenses of a claimant under the National Vaccine Injury Compensation Program. *McCulloch v. Sec'y of Health & Human Servs.*, No. 09-293V, 2017 WL 7053992, at *2 (Fed. Cl. Dec. 19, 2017). Governments may consult physician life care planners in assessing the costs of providing medical care to persons under their control, such as prisoners.

And of course, life care planners may be instrumental in personal injury cases like this one, to objectively formulate an injured person’s future medical requirements and quantify those requirements in monetary terms in a case before settlement discussions. Indeed, the determination of future medical costs by expert life care planners is similar to the determination by other experts of future economic damages such as lost wages in a tort case, expected profits in a commercial dispute, or the costs to maintain a standard of living in a family law matter. Given the medical and scientific background of physician life care planners and that their projections are used across a spectrum of circumstances, their analysis is one of the “powerful tools” that may prevent “abusive unilateral allocations” in cases like this one. *Gallardo by & through Vassallo v. Dudek*, 963 F.3d 1167, 1184 n.3 (11th Cir. 2020) (Wilson, J., concurring in part and dissenting in part).

◆

CONCLUSION

AAPLCP respectfully urges this Court to avoid any language in its opinion that calls into question the reliability or accuracy of future care (and future care cost) formulation. Future medical requirements and associated costs that are formulated by physician life care planners who conform the formulation of their opinions to specific, relevant, and reliable peer reviewed methods in the field of life care planning provide parties and courts, as well as individuals and

organizations not involved in any litigation with expert and reliable formulations of future medically-related care and associated costs.

Respectfully submitted,

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