

CATASTROPHIC BRAIN IMPAIRMENT:
Children, Young Adults and Their Families (Rehabilitation Strategies)

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Back to School

The Use of Pediatric Life Care Plans Prior to Trial and Beyond

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Key Points to Consider:

- Role of the treatment team in preparing Life Care Plans
- Burden of proof when making future care recommendations
- Life Care Plans for Settlement Approval & Guardianship

2



Role of the Treatment Team

- Life Care Planner
 - Collect and review relevant information from the treatment team
 - Summarize and cost out the recommendations
- Treatment Team
 - Medical, Rehabilitation, Education, Social and Family
 - Provide support for the recommendations made by way of a written report and if necessary, testify at trial

3



Role of the Treatment Team

- There must be independent evidence from a medical doctor or health care provider for the future care recommendations.
- Without this support there is a very real risk the evidence from the Life Care Planner will be rejected.

Song v. Hong, 2008 CanLII 10056 (ONSC)

Degennaro v. Oakville Trafalgar Memorial Hospital 2011 ONCA 319 (Can LII)

4



Practice Tips

- Team meeting which includes the Life Care Planner
- Avoid getting support for the recommendations by way of a sign back letter

5



Standard of Proof for Future Care Recommendations



The burden of proof for future recommendations is based on whether there is **“a real and substantial possibility”** the need will occur rather than the higher **“balance of probabilities”** standard.

6

Standard of Proof for Future Care Recommendations

In assessing damages for personal injuries the award may cover not only all injuries actually suffered and disabilities proved as of the date of trial, but also the 'risk' or 'likelihood' of future developments attributable to such injuries. It is not the law that a plaintiff must prove on a balance of probabilities the probability of future damage; he may be compensated if he proves in accordance with the degree of proof required in civil matters that there is a possibility or a danger of some adverse future development.

Schrump v. Koot (1977), 18 O.R. (2d) 337 (C.A.)

7

When is a Life Care Plan Prepared?

- Comprehensive Life Care Plan
- Post-Settlement Life Care Plan

8



When is a Life Care Plan Prepared? *Cont'd*

- Comprehensive Life Care Plan is prepared prior to Mediation and, if necessary, updated prior to Trial
- Comprehensive Life Care Plan is prepared without regard for the amount of money that will be available to meet the child's needs
- Only prepared during the course of the litigation

9



When is a Life Care Plan Prepared? *Cont'd*

- Post-Settlement Life Care Plan is prepared once the actual amount of money available to the child is defined
- Post-Settlement Life Care Plan is prepared after Mediation/Trial and in support of a Motion to approve the settlement and Guardianship Application
- Reflects what services the child can afford and provides an explanation as to why certain services in the Comprehensive Life Care Plan are not being implemented at that time
- Multiple Post-Settlement Life Care Plan may be prepared over the course of the child's lifetime

10



Practice Tip

- The Life Care Plan is the heart and soul of a pediatric personal injury claim.
- Must be seen as a fair and balanced Plan that is based on a strong foundation of medical and rehabilitation evidence.
- When in doubt, do not hesitate to contact Counsel and members of the treatment team to discuss any issues that may arise.

11



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THANK YOU

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