**Who’s The Expert?**

**Examining Life Care Planning and Expert Testimony in Virginia**

**Sean C. Workowski**

**Frith Anderson & Peake, PC**

**Susan Wirt**

**Wirt & Associates Life Care Planning**

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Introduction

What is a life care plan?

Life care plans are generally designed for a person with a disability resulting from catastrophic injury. A life care plan “is an overall service or care plan that provides for goods and services to achieve best outcomes over the life expectancy of a person with a disability resulting from catastrophic injury.”[[1]](#footnote-1) The planner works with the patient and medical experts to assess the needs and costs of the patient’s care. It is a “dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.” [[2]](#footnote-2)

In litigation, life care plans are powerful tools that serve many uses. Often, plaintiffs use these plans to determine whether their own expert’s report will be supported or disqualified. Alternatively, defendants use these plans to critique plaintiff’s expert.[[3]](#footnote-3) As a result, this testimony can have a significant impact on how the jury views issues of evidence and ultimately damages. It is essential that we understand how these plans are compiled and how Virginia courts treat expert testimony.

These materials and corresponding presentation will discuss the treatment of life care plans in Virginia Courts by reviewing: (I) the treatment of life care plans in the United States District Court for the Western District of Virginia; (II) the admissibility of expert witness testimony in Virginia State Courts; (III) qualifications of life care planers; and (IV) practical tips for cross examining life care planners; (V) conclusion.

1. Treatment of Life Care Plans in the United States District Court for the Western District of Virginia

A recent decision from the Western District of Virginia helped illustrate the strategic importance of life care plans and expert testimony in litigation. In [Boden v. United States,](https://advance.lexis.com/api/document/collection/cases/id/5XS8-2GW1-JKPJ-G3VT-00000-00?cite=2019%20U.S.%20Dist.%20LEXIS%20217141&context=1000516) a case brought under the Federal Tort Claims Act, the Plaintiff alleged a podiatrist practicing at the Veteran Affairs Medical Center acted negligently.[[4]](#footnote-4) Plaintiff Boden filed several motions in limine to exclude the Government’s expert witness regarding a life care plan and evidence of emails to a treating physician. Before trial, Plaintiff retained a doctor to create a life care plan for his projected future medical needs. The Government retained Susan Wirt, a registered nurse and certified life care planner to complete a report rebutting Plaintiff’s expert. Wirt’s report critiqued Plaintiff’s expert in several significant areas. Specifically, the Court opined that Wirt’s report showed:

• Mobility Equipment: Wirt agrees that Boden will require a scooter or other mobility device. However, Wirt disagrees that Boden requires a scooter lift for his car. Wirt identifies that there are numerous lightweight scooters than can be broken down into several smaller components.

• Bathing: Wirt acknowledges that Boden will need a bench or chair for his shower. However, Wirt points out that Boden already has a shower chair that will need to be replaced periodically.

• Home Modifications: Wirt acknowledges that Boden will require a grab rail in his shower. However, Wirt points out that Boden already has a grab rail in his shower, and one should not be included in his life-care plan.

• Support Care: Wirt disagrees with Dr. Lichtblau [Plaintiff’s Expert] that Boden will require aide and attendant care at the level detailed in his report. Wirt asserts that there is no medical evidence that Boden cannot independently complete his activities of daily living. [[5]](#footnote-5)

Discussing the admissibility of Wirt’s testimony, the Court noted that Wirt “based her opinion on over two decades of clinical experience as a registered nurse, a certified case manager, and a life-care planner, as well as her review of the pertinent scientific and medical literature reasonably relied upon by members of the life-care planning profession.” [[6]](#footnote-6)

Admitting Wirt’s testimony, the Court relied on Federal Rule of Evidence 702, which governs the admissibility of expert testimony. Significantly, on the federal level, the evolution of expert testimony in this field is notable. The Court cited two monumental cases in this area, [Daubert v. Merrell Dow Pharms. Inc.,](https://advance.lexis.com/document/?pdmfid=1000516&crid=e51bfd52-9b13-4d49-b4bc-1d0abb93e4de&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pddocid=urn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pdcontentcomponentid=6414&pdshepid=urn%3AcontentItem%3A5XSG-ND21-J9X5-Y20K-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=spnqk&earg=sr1&prid=b80e7d48-c042-41de-a596-9fcc3028dd9e) and [Kumho Tire Co., Ltd. v. Carmichael.](https://advance.lexis.com/document/?pdmfid=1000516&crid=e51bfd52-9b13-4d49-b4bc-1d0abb93e4de&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pddocid=urn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pdcontentcomponentid=6414&pdshepid=urn%3AcontentItem%3A5XSG-ND21-J9X5-Y20K-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=spnqk&earg=sr1&prid=b80e7d48-c042-41de-a596-9fcc3028dd9e)

In Daubert, the Court explained that the “trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.”[[7]](#footnote-7) Under Rule 702, “expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful” to the trier of fact. [[8]](#footnote-8) In Kumho Tire, the Supreme Court made clear that these principles apply to all proposed expert witnesses, including those with specialized knowledge such as Wirt.[[9]](#footnote-9)

Courts have further opined that, “[t]he question of whether a witness is qualified to testify is context-driven and can only be determined by the nature of the opinion he offers.” [[10]](#footnote-10) This evaluation of the expert’s opinion rests with the trial judge’s discretion.[[11]](#footnote-11)

Using these principles, the Court admitted Wirt’s testimony. The Plaintiff further questioned whether Wirt’s life care plan needed to undergo a physician’s review because it was a federal case involving a life care plan. Rejecting this argument, the Court held that “courts in this circuit have found that life-care plans can be admissible without a physician review, so long as they are reliable.”[[12]](#footnote-12)

As a result, it appears that a life care planner’s methodology and credibility can be more important to a court than necessarily having a physician review a life care plan. Often, “[c]ourts typically look to what evidence the life-care planner relied on when developing the life-care plan, including reviewing a patient’s medical records, reviewing depositions of the patient or the patient’s treating physician, meeting with the patient or treating physician, or physically examining the patient.”[[13]](#footnote-13)

This type of discretionary review is similar to those methodologies used in a vocational rehabilitation cases in which an expert is often asked to produce a report noting an individual’s employability, placeability, loss of earning capacity. These special reports include a review of the individual’s education, employment history, age, abilities, transferable skills, physical and psychological limitations, local job market, and any other factors that affect his employability and earning capacity. Experts often list the documents they reviewed in preparing these reports, including medical records, and most importantly describe their methodology to help gain credibility with the court.

Furthermore, in addition to the importance of a detailed methodology, courts examine the use of the expert’s testimony in litigation. The Boden Court noted that under those specific circumstances, the Defendant’s testimony about the life care plan was not intended to attack the credibility of Plaintiff’s expert, but rather it was offered to rebut the expert’s report.[[14]](#footnote-14) As a result, the Court admitted Wirt’s testimony in the federal case. So how does the treatment of life care planners in federal court compare to state courts?

1. The Admissibility of Expert Witness Testimony in Virginia State Courts

Virginia State Courts do not adhere to the Daubert standard as described above and discussed in Boden.[[15]](#footnote-15) As a result, it is important to examine the admissibility of an expert witness in Virginia. As a practical matter, Virginia attorneys involved in a case with a life care planner should always be aware of the life care planner’s experience and credibility.

Generally, in Virginia a witness who qualifies as an expert may testify to opinions based on “scientific, technical, or other specialized knowledge” if that testimony will assist the trier of fact in a civil proceeding.[[16]](#footnote-16) When such “scientific evidence is offered, the court must make a threshold finding of fact with respect to the reliability of the scientific method offered, unless it is of a kind so familiar and accepted as to require no foundation to establish the fundamental reliability of the system, such as fingerprint analysis; or unless it is so unreliable that the considerations requiring its exclusion have ripened into rules of law, such as 'lie-detector' tests; or unless its admission is regulated by statute, such as blood-alcohol test results.” [[17]](#footnote-17) Additionally, “[w]hen a litigant claims that a particular scientific, technical or other specialized theory or technique is valid, there must be some basis for determining the validity of the proffered theory or technique.”[[18]](#footnote-18)

Therefore, specialized knowledge and a proper foundation are essential factors in admitting an expert’s testimony. In [Combs v. Norfolk & Western Ry. Co*.*](https://advance.lexis.com/document/midlinetitle/?pdmfid=1000516&crid=34617ce2-f41d-4f27-aff1-0d2910039bf3&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4NJ4-33S0-0039-44BR-00000-00&pdcomponentid=10810&ecomp=-7xfk&earg=sr0&prid=d4170a69-f14e-4258-b69e-e5c0e1420767), the Court found that the trial court abused its discretion by allowing a biomechanical engineer to offer an expert opinion regarding the cause of the plaintiff’s ruptured disc.[[19]](#footnote-19) The expert was not a medical doctor and was not qualified to give an expert opinion discussing the cause of human injury because “the question of causation of a human injury is a component part of a diagnosis, which in turn is part of the practice of medicine.”[[20]](#footnote-20) In John v. Im, the Court again upheld the line of reasoning in Combs, and stated that a licensed psychologist was not a medical doctor, and therefore was “not qualified to make a medical diagnosis or to state a medical opinion.”[[21]](#footnote-21)

Importantly, in 2007, the Supreme Court of Virginia opined that both of these holdings show that “we are of opinion that *Combs* and *John* do not, and were not intended to, establish a categorical rule in this Commonwealth that only a medical doctor may qualify to render an expert opinion regarding the diagnosis of PTSD or any other recognized mental disorder.”[[22]](#footnote-22) For example, the courts have held that “licensed clinical social workers who are authorized to diagnose mental disorders by statute in appropriate circumstances, may render expert testimony regarding such diagnoses.”[[23]](#footnote-23)

In addition to the qualifications of the testifying expert, the court will examine the content and use of the proffered testimony. In McMunn v. Tatum*,* the Court considered “whether it was error to admit proof of [a] plaintiff’s medical bills without foundation evidence that they were a necessary consequence of the defendant’s negligence.”[[24]](#footnote-24) In McMunn, the plaintiff filed a medical negligence action against her dentist. At trial, Plaintiff “offered in evidence an exhibit consisting of 49 pages of medical, hospital, and pharmaceutical bills attached to a summary sheet, which contained a total of the bills.” She testified that some of the bills were for conditions unrelated to her claim against the dentist, so she “deleted all charges she considered unrelated her claim.” Her summary went from $102,687.48 in medical bills, from which she deducted $2,139.60 for unrelated charges. She did not qualify as an expert witness. The Dentist objected to this evidence on the basis that it lacked a foundation to show that the expenses claimed were necessarily incurred as a result of his alleged negligence. The Court stated that, “[w]e now hold that where the defendant objects to the introduction of medical bills, indicating that the defendant’s evidence will raise a substantial contest as to either the question of medical necessity or the question of causal relationship, the court may admit the challenged medical bills only with foundation expert testimony tending to establish medical necessity or causal relationship, or both, as appropriate.”[[25]](#footnote-25)

In [Norfolk Bev. Co. v. Cho,](https://advance.lexis.com/api/document/collection/cases/id/3YRD-57R0-0039-40N4-00000-00?page=353&reporter=3460&cite=259%20Va.%20348&context=1000516) the Court held that the Circuit Court did not err in in admitting the plaintiffs’ medical summaries. [[26]](#footnote-26) In Norfolk Bev., a board certified physiatrist, board certified in physical medicine and rehabilitation, “testified that he performed separate, independent medical evaluations.” After he reviewed all the medical records, he “conducted comprehensive physical examinations upon them, took their medical histories, evaluated their conditions, and made recommendations for medical treatment.” Significantly, the Court stated that “[e]ven though the exhibits that were introduced in evidence contained medical bills from hospitals, radiologists, family practitioners, neurologists, emergency room physicians, and other health care providers, we hold that in view of [the physiatrist’s] expertise, the circuit court did not err in permitting him to render opinions with a reasonable degree of medical certainty that the treatment the [plaintiffs] received was reasonable and causally related to the assaults.”[[27]](#footnote-27) The Court again focused on the methodology of the expert.

However, even if the court admits the expert’s testimony, there are hearsay limitations on the testimony. In Hyundai Motor Co. v. Duncan, the Supreme Court of Virginia confirmed that expert opinion may not be admissible if the testimony is “founded upon assumptions that have no basis in fact,” or if “the expert fails to consider all the variables that bear upon the inferences to be deduced from the facts observed.”[[28]](#footnote-28) The Court noted that “[w]hile Code § 8.01-401.1 allows an expert to express an opinion without initially disclosing the basis for the opinion, [w]e have never, however, construed that section to permit the admission of expert testimony that lacks evidentiary support.”[[29]](#footnote-29) The expert’s opinion must be premised upon assumptions that have a sufficient factual basis and take into account all relevant variables.[[30]](#footnote-30)

Similarly in McMunn, the Court held that “Code § 8.01-401.1 does not authorize the admission in evidence, upon the direct examination of an expert witness, of hearsay matters of opinion upon which the expert relied in reaching his own opinion, notwithstanding the fact that the opinion of the expert witness is itself admitted, and notwithstanding the fact that the hearsay is of a type normally relied upon by others in the witness' particular field of expertise.” [[31]](#footnote-31)

Furthermore, in [Castillo v. Loudoun Cty. Dep’t of Family Servs.,](https://advance.lexis.com/api/document/collection/cases/id/5S17-X5G1-JB2B-S4FX-00000-00?page=565&reporter=3461&cite=68%20Va.%20App.%20547&context=1000516) the Court noted that “Rule 2:703(a) permits expert witnesses in civil cases to base opinion testimony on any material normally relied upon by others in that field, even if that information is inadmissible in evidence.”[[32]](#footnote-32) However, it is important to note that Rule 2:703(a), “derived from Code § 8.01-401.1, does not provide *carte blanche* for litigants to introduce otherwise inadmissible material in derogation of the ordinary rules of evidence.” [[33]](#footnote-33) As the Court explained, “the Supreme Court has ruled that Code § 8.01-401.1 ‘does not authorize the admission in evidence, upon the direct examination of an expert witness, of hearsay matters of opinion upon which the expert relied in reaching his own opinion.’” [[34]](#footnote-34) These holdings suggest that it is essential to consider hearsay rules when discussing experts’ testimony.

Life care plans will not be admitted into evidence if the expert testimony is “speculative or founded on assumptions that have no basis in fact.”[[35]](#footnote-35) It must “not be too speculative.”[[36]](#footnote-36) When examining the life care plan, testimony about the methodology used is essential. Any concern about the plan or conflicting testimony about the plan can significantly impact the admissibility of the plan into evidence. For example, in one case the Defendants asserted that, the “plaintiff’s lifecare planner…testified that she was speculating, or did not have knowledge of actual future need for many of the items, such that there was no reasonable basis. Further, while [the life care planner] testified that [plaintiff’s] treating neurologist…reviewed and endorsed it, he also testified that several areas of the plan are uncertain and therefore unsupportable.”[[37]](#footnote-37) As this case illustrates, the methodology and the deposition testimony of the life care planner and any reviewing physician is paramount to the Court’s examination of whether or not to admit the testimony.

As shown above, Virginia precedent has a complex history of the treatment of expert testimony. This treatment is further complicated with the introduction of life care planners. As a practical matter, and as a guiding principle from the International Association of Rehabilitation Professions, a life care planner should “seek recommendations from other qualified professionals or relevant sources for including of care items/services outside the individual life care planner’s professional scope(s) of practice.”[[38]](#footnote-38) This will assist the litigator in evaluating the credibility of the expert witness and help to lay proper foundation for the introduction of testimony. This expertise is important because there is no codified qualification to become a life care planner.

1. Qualifications of Life Care Planers

There are no specific codified or otherwise required state qualifications to become a life care planner. Historically, life care planners have been physicians, nurses, counselors, and other professionals in the health and medical arena. Private sector entities also have standards frameworks to help their members develop and document professional competence, such as the National Association of Social Work, Standards for Case Management 2000.[[39]](#footnote-39) One may obtain a certification to become a Certified Life Care Planner or a Certified Nurse Life Care Planner. This further illustrates the importance of documenting the life care planner’s methodology, experience, and credibility when proffering the expert testimony.

1. Practical Tips for Cross Examining Life Care Planners

When considering how to cross examine a life care planner, attorneys should be aware of the specific life care planner’s expertise and qualifications, as well as whether the proper testimonial foundation. It is important to consider the area of expertise of the life care planner because life care planners may not generally testify about areas in which they are not qualified. The “[q]ualification of an expert witness does not insure admission of his every statement and opinion.”[[40]](#footnote-40) As a result, the hearsay rules and foundational requirements are constantly at play in these important cases.

Additionally, expert opinions must be premised upon assumptions that have a sufficient factual basis and take into account all relevant variables. The qualification of an expert witness “rests largely within a trial court’s discretion. And, the fact that a witness is an expert in one field does not make him an expert in another field, even though that field is closely related.” [[41]](#footnote-41) Remember a good practical tip is that a life care planner should seek additional recommendations from other qualified professionals, especially if the area is outside of the life care planners professional area of expertise.[[42]](#footnote-42) This will help add to the credibility of the life care planner in the eyes of the court.

1. Conclusion

Under the precedent discussed above, it is important to select a reputable life care planner who uses a detailed and traceable methodology which the court and the jury can understand and follow. There are limitations to any expert’s testimony, as this testimony needs proper foundation and must conform the hearsay rules. However, Virginia Courts have generally been inclined to admit life care planners as expert witnesses. Examining life care planners or any expert witness can be difficult. It is essential to understand the precise methodology used by any expert witness. It is also advisable that Virginia attorneys know the areas of expertise your expert specializes in, as the Court will often factor their experience into the calculation of whether to admit their testimony. As a result, it is paramount that Virginia attorneys always ask, “who’s the expert?”

1. Penelope Caragonne, Keith Sofkais, Wendie Howlandis, [*Frameworks for Evaluating Life Care Plans*, 32 Health Lawyer 34](https://advance.lexis.com/api/document/collection/analytical-materials/id/5XM6-KS31-JXG3-X1XF-00000-00?page=34&reporter=9943&cite=32%20Health%20Lawyer%2034&context=1000516) (October 2019). [↑](#footnote-ref-1)
2. International Academy of Life Care Planners, The Life Care Planning Section of the International Association of Rehabilitation Professionals, *Standards of Practice for Life Care Planners*, Third Edition (2015) (quoting from International Conference on Life Care Planning and the International Academy of Life Care Planners (Adopted 1998, April)). [↑](#footnote-ref-2)
3. Caragonne, Sofkais, Howlandis, supra note 1, at 34. [↑](#footnote-ref-3)
4. *Boden v. United States,* No. 7:18cv00256, 2019 U.S. Dist. LEXIS 217141 at 6 (W.D. Va. Dec. 17, 2019). [↑](#footnote-ref-4)
5. *Id*. at 6-7. [↑](#footnote-ref-5)
6. *Id*. at 14. [↑](#footnote-ref-6)
7. [*Daubert v. Merrell Dow Pharms. Inc*., 509 U.S. 579, 589 (1993)](https://advance.lexis.com/document/?pdmfid=1000516&crid=e51bfd52-9b13-4d49-b4bc-1d0abb93e4de&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pddocid=urn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pdcontentcomponentid=6414&pdshepid=urn%3AcontentItem%3A5XSG-ND21-J9X5-Y20K-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=spnqk&earg=sr1&prid=b80e7d48-c042-41de-a596-9fcc3028dd9e). [↑](#footnote-ref-7)
8. *Id*. at 591. [↑](#footnote-ref-8)
9. *See* [*Kumho Tire Co., Ltd. v. Carmichael* 526 U.S. 137, 141 (1999)](https://advance.lexis.com/document/?pdmfid=1000516&crid=e51bfd52-9b13-4d49-b4bc-1d0abb93e4de&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pddocid=urn%3AcontentItem%3A5XS8-2GW1-JKPJ-G3VT-00000-00&pdcontentcomponentid=6414&pdshepid=urn%3AcontentItem%3A5XSG-ND21-J9X5-Y20K-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=spnqk&earg=sr1&prid=b80e7d48-c042-41de-a596-9fcc3028dd9e) (noting the applicable rules for expert testimony). [↑](#footnote-ref-9)
10. *Boden*, supra note 4, at 8, *quoting* *RG Steel Sparrows Point, LLC v. Kinder Morgan Bulk Terminals, Inc*., 609 F. App’x 731, 738 (4th Cir. 2015).  [↑](#footnote-ref-10)
11. See *United States v. Dorsey*, 45 F.3d 809, 814 (4th Cir. 1995) (stating that “[a] trial judge has a great deal of discretion in deciding whether to admit or exclude expert testimony.”). [↑](#footnote-ref-11)
12. *See* *Boden*, supra note 4, 9-11, *citing* *Burress v. Winters*, No. 08-cv-2622, 2010 U.S. Dist. LEXIS 50283, at 1 (D. Md. May 21, 2010); *Payne v. Wyeth Pharms., Inc*., No. 08-cv-119, 2008 U.S. Dist. LEXIS 106771 at 3-4 (E.D. Va. Nov. 17, 2008). [↑](#footnote-ref-12)
13. *Id*. at [11](https://advance.lexis.com/api/document/collection/cases/id/5XS8-2GW1-JKPJ-G3VT-00000-00?page=11&reporter=1293&cite=2019%20U.S.%20Dist.%20LEXIS%20217141&context=1000516). [↑](#footnote-ref-13)
14. *Boden*, supra note 4, at 15 *citing* *Keystone Transp. Sols., LLC v. Nw. Hardwoods, Inc*., No. 5:18-cv-00039, 2019 U.S. Dist. LEXIS 67562 (W.D. Va. Apr. 22, 2019); *Snider-Jefferson v. Amigo Mobility Intl, Inc*., No. 2:15-cv-406, 2016 U.S. Dist. LEXIS 109319 (E.D. Va. Aug. 17, 2016). [↑](#footnote-ref-14)
15. *See* *Padula-Wilson v. Wilson*, No. 1203-14-2, 2015 Va. App. LEXIS 123, at 23 (Va. Ct. App. Apr. 14, 2015) (stating that “Virginia has not adopted the framework for admissibility of scientific evidence provided in *Daubert.*”). [↑](#footnote-ref-15)
16. *Id*. at 22. [↑](#footnote-ref-16)
17. *Id*. *citing* *Billips v. Commonwealth*, 274 Va. 805, 808-09 (2007). [↑](#footnote-ref-17)
18. *Wilson*, supra note 16, at [22](https://advance.lexis.com/api/document/collection/cases/id/5FRW-M5K1-F04M-4012-00000-00?page=22&reporter=7461&cite=2015%20Va.%20App.%20LEXIS%20123&context=1000516), *citing* [*Shooltz v. Shooltz*, 27 Va. App. 264 (1998)](https://advance.lexis.com/document/?pdmfid=1000516&crid=3cfe59b2-7c89-4f1d-87fc-ae4c5dcab318&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5FRW-M5K1-F04M-4012-00000-00&pddocid=urn%3AcontentItem%3A5FRW-M5K1-F04M-4012-00000-00&pdcontentcomponentid=10812&pdshepid=urn%3AcontentItem%3A5FR0-15G1-DXC8-749V-00000-00&pdteaserkey=sr0&pditab=allpods&ecomp=spnqk&earg=sr0&prid=5c0a4729-e410-4475-97df-64859a67da17). [↑](#footnote-ref-18)
19. *Combs v. Norfolk & Western Ry. Co*., 256 Va. 490 (1998). [↑](#footnote-ref-19)
20. *Id*. at 497. [↑](#footnote-ref-20)
21. 263 Va. 315, 319 (2002). [↑](#footnote-ref-21)
22. [*Conley v. Commonwealth*, 273 Va. 554, 561](https://advance.lexis.com/api/document/collection/cases/id/4NJ4-33S0-0039-44BR-00000-00?page=561&reporter=3460&cite=273%20Va.%20554&context=1000516) (2007). [↑](#footnote-ref-22)
23. *Id*. at 562. [↑](#footnote-ref-23)
24. [237 Va. 558, 560](https://advance.lexis.com/api/document/collection/cases/id/3S3J-VT50-003D-519Y-00000-00?page=560&reporter=3460&cite=237%20Va.%20558&context=1000516) (1989). [↑](#footnote-ref-24)
25. *Id*. at 569. [↑](#footnote-ref-25)
26. 259 Va. 348, 353 (2000). [↑](#footnote-ref-26)
27. *Id*. at 351-353. [↑](#footnote-ref-27)
28. 289 Va. 147, 155 (2015) (quoting *CNH America LLC v. Smith*, 281 Va. 60, 67 (2011)). [↑](#footnote-ref-28)
29. *Id*., *citing* *Vasquez v. Mabini*, 269 Va. 155, 159, (2005). [↑](#footnote-ref-29)
30. *Id*. [↑](#footnote-ref-30)
31. [237 Va. 558, 560](https://advance.lexis.com/api/document/collection/cases/id/3S3J-VT50-003D-519Y-00000-00?page=560&reporter=3460&cite=237%20Va.%20558&context=1000516) (1989). [↑](#footnote-ref-31)
32. 68 Va. App. 547, No. 1499-17-4 2018 Va. App. LEXIS 87, at 565 (Va. Ct. App. Apr. 3, 2018). [↑](#footnote-ref-32)
33. *Id*. [↑](#footnote-ref-33)
34. [*Id*.](https://advance.lexis.com/api/document/collection/cases/id/5S17-X5G1-JB2B-S4FX-00000-00?page=565&reporter=3461&cite=68%20Va.%20App.%20547&context=1000516) *citing* *Commonwealth v. Wynn*, 277 Va. 92, 98, 671 S.E.2d 137, 140 (2009). [↑](#footnote-ref-34)
35. *County Countryside Corp. v. Taylor*, 263 Va. 549, 553 (2002). [↑](#footnote-ref-35)
36. *Vasquez v. Mabini*, 269 Va. 155, 159 (2005). [↑](#footnote-ref-36)
37. *See* the attached document from a case in which all personal identifiable information has been redacted. This document shows an example of an argument to preclude a life care plan from being admitted into evidence. [↑](#footnote-ref-37)
38. Karen Preston, Journal of Life Care Planning, Vol 17, No. 1, (3-3) (2019), Int’l Assoc. of Rehab Professionals quoting from Berns, Johnson, Pomeranz, and Preston, Life Care Planning Summit (April 2010). [↑](#footnote-ref-38)
39. Caragonne, Sofkais, Howlandis, *supra note* 1, at 37 *citing* National Association of Social Work, NASW Standards for Social Work Case Management 2013. [↑](#footnote-ref-39)
40. 289 Va. 147, 147 (2015). [↑](#footnote-ref-40)
41. [*Tazewell Oil Co. v. United Virginia Bank/Crestar Bank*, 243 Va. 94, 99.](https://advance.lexis.com/api/document/collection/cases/id/3S3J-VRS0-003D-50TJ-00000-00?page=110&reporter=3460&cite=243%20Va.%2094&context=1000516) [↑](#footnote-ref-41)
42. *See generally*, Karen Preston, Journal of Life Care Planning, Vol 17, No. 1, (3-3) (2019), Int’l Assoc. of Rehab Professionals quoting from Berns, Johnson, Pomeranz, and Preston, Life Care Planning Summit (April 2010) (discussing standards of care for life care planners). [↑](#footnote-ref-42)