



## California's Sanchez Decision and the End of Expert Reliance on Hearsay

## Who Should Offer Expert Testimony on Medical Expenses

- By Thomas J. Dawson

# What is a Life Care Plan?

"[t]he life care plan [functions] as... 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 healthcare needs."

A large, semi-circular graphic on the left side of the slide contains a photograph of a wooden gavel resting on an open book. The background of the slide is a solid dark blue.

# What is the role of the Life Care Planner?

The role of the life care planner is to outline the "future care needs and costs for individuals with catastrophic injuries, disabilities, or chronic medical needs."

# How does a life care planner build a sound plan?

## The Development of a Sound Plan requires:

- 1 Collection of facts (such as medical records and information from personal interviews)
- 2 Formulation of an opinion or diagnostic conclusion about the patient's future medical care
- 3 Determination of the cost of care for the patient based on available cost data

A large, stylized graphic on the left side of the slide. It features a dark wooden gavel with a gold-colored head, positioned diagonally. Overlaid on the gavel is a large, blue, semi-transparent dollar sign (\$).

# Paul Deutsch on Life Care Planning

**"The use of clinical practice guidelines and research literature, while useful , is not enough to meet the standards that have become necessary for a properly developed life care plan"**

A sound Life Care Plan requires a strong foundation. Planners who fail to provide one undermine the validity of their work. The exercise of professional judgment based on opinion without the proper foundation, and decisions based on misinformation and limited or poor judgment are inherently flawed.




# Along Came *Sanchez*

## *People v Sanchez*

Overruled long-standing authority, allowing testifying experts to rely on case-specific hearsay.

## *People v. Stamps*

Echoing the Sanchez Court's sentiment, the Stamps Court held that an expert cannot testify about case-specific facts, which she treats as correct unless the expert has personal knowledge of the facts.

A close-up photograph of a dark wood gavel with a brass band, positioned diagonally on the left side of the slide. A large, semi-transparent blue graphic, resembling a stylized letter 'P' or a bracket, is overlaid on the gavel and extends into the background.

“ When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth. ”

# *Sanchez* The Paradigm Shift

*Sanchez* Establishes Two Conditions for Expert Testimony:

- 1 Experts must limit their testimony to facts about which they have personal knowledge
- 2 Juries must seek testimony from Experts who have personal knowledge about the facts in question.





# The Problem: Offering Testimony on Pricing

Life Care Planners are expected to offer testimony on the reasonableness of health insurance costs, and billed or charged amounts related to medical expenses. But, are they right for the Job?

Example: A Life Care Planner testifies to her method of analysis by relaying to counsel the following

- 1 She inputs the cost data for the plaintiff's future care into a selected database,
- 2 She inputs unique identifiers to refine the data, and
- 3 The database produces outputs generally considered reliable by members of the life care planning profession.

**Does the Planner's Pricing Method meet the Sanchez test?**

# Healthcare Market Pricing: What is the method?

*Pebley. Santa Clara Organics, LLC*

Ruling: While the insured and uninsured are subject to the "billed amount" in the healthcare market, insurance status is accidental. Therefore, the "insured" and "uninsured" should be treated on par in the marketplace.

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# The Foundation for Price Reasonableness

We have a complete picture of the healthcare market and a reliable basis for the identification of price "reasonableness" when we account for the uninsured, coupled with employment-based, direct purchase, Medicare, Medicaid, and Military-based insureds

## *Cuevas v. Contra Costa County*

Ruling: Evidence of the full billed amount for medical expenses is not enough to determine its reasonable value.

## *United States v. Berkeley Heartlab, Inc.*

Ruling: Any methodology to determine the "reasonableness" of medical services based exclusively on charges is unreliable and not a reasonable representation of fair market value.



# Admissable Testimony

California's limitation on expert testimony has forced the legal community to reconsider:

- ❑ Who can testify?
- ❑ What information can be offered?
- ❑ Whether the evidence is admissible under Sanchez?

These questions are the cornerstone of the conversation about personal injury and the calculation of price reasonableness.



# Determining Price Reasonableness: What Is Required?

- ❑ The purchase of items in the market requires cost or pricing analysis to determine price reasonableness.
- ❑ Given the complexity of today's marketplace, we are unlikely to see a credible pricing analysis based on a cursory market examination.
- ❑ The federal government applies comparative pricing strategies to evaluate the price reasonableness of medical expenses.

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# Comparative Pricing

Experts adept in econometric techniques commonly use comparative pricing strategies to assess market reasonableness.

Life Care Planners opining on healthcare pricing without personal knowledge of comparative pricing strategies and how they may be applied could find it difficult to overcome Sanchez.

# Conclusion

Pricing medical expenses requires an understanding of investigative and econometric techniques tempered by case law.

Life Care Planners without personal knowledge of pricing analysis may fall short of being able to provide reliable evidentiary testimony.

A circular inset on the left side of the slide shows a close-up of medical equipment, including a wooden gavel and a silver stethoscope, set against a light blue background. The inset is framed by a dark blue, abstract, curved shape that extends across the left side of the slide.

# THANK YOU