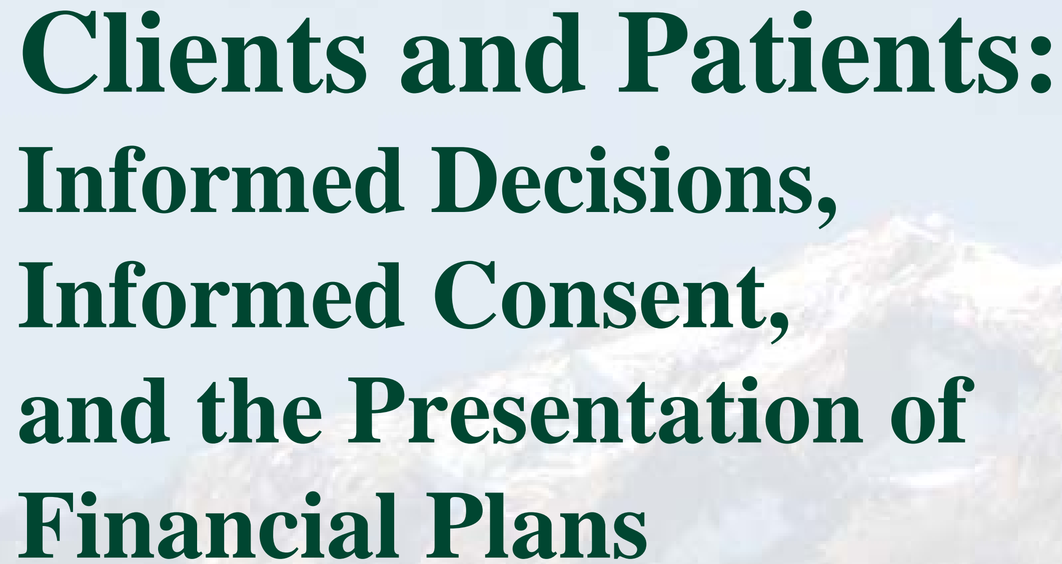

Clients and Patients:
Informed Decisions, Informed Consent, and the Presentation of Financial Plans

First Affirmative
Financial Network, LLC

Johann A. Klaassen, PhD, CFP®, AIF®
Vice President, Managed Account Solutions
800-422-7284 x118 / johann@firstaffirmative.com

The Upshot:

1. Financial planning practitioners have a fiduciary duty to ensure that their clients understand the plan / investment policy statement, so as to be able to make an informed decision.

2. Physicians have a similar duty to obtain informed consent to a proposed plan of treatment – and the analogy is worth exploring.

3. But framing effects are endemic to these and all decision contexts – so (a) the concept of informed consent or decision may not be as important as we tend to think, and (b) a kind of "libertarian paternalism" may be justified as a way to respect autonomy and encourage well-being.

The Rules:

- “The financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.” (CFP Board Practice Standard 400-3)
- “The preparation and maintenance of each client’s IPS is one of the most critical functions performed by the Investment Advisor. … It should be a formal, long-range, strategic plan that allows the Investment Advisor to coordinate the management of each client’s investment program in a logical and consistent framework. All material investment facts, assumptions, and opinions should be included.” (Fiduciary 360 Practice A-2.6)

Obligations by Analogy?

We know that we have an obligation to explain our financial plans / investment advice to our clients, but we seldom if every really wonder

a. Why we have such an obligation,
b. What it means, or
c. What we should do differently.

Maybe an analogy would help?

Medical Advice

There is another field with a similar set of obligations: physicians must obtain the "informed consent" of a patient before beginning treatment.

Not that I'm recommending that you give medical advice …

Sources of the Obligation

"The ethical foundation of informed consent can be traced to the promotion of two values: personal well-being and self-determination. To ensure that these values are respected and enhanced, the [President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research] find that patients who have the capacity to make decisions about their care must be permitted to do so voluntarily and must have all relevant information regarding their condition and alternative treatments, including possible benefits, risks, costs, other consequences, and significant uncertainties surrounding any of this information".

A "Proprietary Gate"

What does "consent" mean, really?

Current philosophical consensus seems to be that consent "opens the boundaries of personal sovereignty to permit another's action" – that is, my consent gives you a right to act on me in a way that would not be permitted otherwise.

Example: "The fact that A consents to B's performing some act X shows that A has waived her moral rights against B's performing X. Because she consents, A has no grounds for moral complaint against B" on the basis of a rights violation.

That is, the act could still be wrong – greedy, unkind, exploitative – but it doesn't violate A's rights.

Based on John Kleinig, "The Nature of Consent", and Jason Hanna, "Consent and the Problem of Framing Effects". Full citations available on request.

Medical Crustaceans?

Medical professionals have developed a mnemonic by which to remember the four parts of a consent presentation: CRAB.

- Complications
- Risks
- Alternatives
- Benefits

Financial Crustaceans?

Complications

- "The practitioner should indicate that even though the recommendations may meet the client's goals, needs, and priorities, changes in personal and economic conditions could alter the intended outcome."

Risks

- "[Such] changes include, but are not limited to: legislative, family status, career, investment performance, and / or health."

Source: Explanation of Practice 400-3

Alternatives

- "This evaluation [of alternative courses of action] may involve … considering multiple assumptions, conducting research, or consulting with other professionals. This process may result in a single alternative, multiple alternatives, or no alternative to the client's current course of action [being presented]."

Benefits

- A plan which, in the opinion of the planner, can "reasonably meet the client's goals, needs, and priorities".

Source: Explanation of Practice 400-1

Financial Crustaceans?

Complications

- "The practitioner should indicate that even though the recommendations may meet the client's goals, needs, and priorities, changes in personal and economic conditions could alter the intended outcome."

Risks

- "[Such] changes include, but are not limited to: legislative, family status, career, investment performance, and / or health."

Source: Explanation of Practice 400-3

Alternatives

- "This evaluation [of alternative courses of action] may involve … considering multiple assumptions, conducting research, or consulting with other professionals. This process may result in a single alternative, multiple alternatives, or no alternative to the client's current course of action [being presented]."

Benefits

- A plan which, in the opinion of the planner, can "reasonably meet the client's goals, needs, and priorities".

Source: Explanation of Practice 400-1

Financial Crustaceans?

Complications

- "The practitioner should indicate that even though the recommendations may meet the client's goals, needs, and priorities, changes in personal and economic conditions could alter the intended outcome."

Risks

- "[Such] changes include, but are not limited to: legislative, family status, career, investment performance, and / or health."

Source: Explanation of Practice 400-3

Alternatives

- "This evaluation [of alternative courses of action] may involve … considering multiple assumptions, conducting research, or consulting with other professionals. This process may result in a single alternative, multiple alternatives, or no alternative to the client's current course of action [being presented]."

Benefits

- A plan which, in the opinion of the planner, can "reasonably meet the client's goals, needs, and priorities".

Source: Explanation of Practice 400-1

Financial Crustaceans?

Complications

- "The practitioner should indicate that even though the recommendations may meet the client's goals, needs, and priorities, changes in personal and economic conditions could alter the intended outcome."

Risks

- "[Such] changes include, but are not limited to: legislative, family status, career, investment performance, and / or health."

Source: Explanation of Practice 400-3

Alternatives

- "This evaluation [of alternative courses of action] may involve … considering multiple assumptions, conducting research, or consulting with other professionals. This process may result in a single alternative, multiple alternatives, or no alternative to the client's current course of action [being presented]."

Benefits

- A plan which, in the opinion of the planner, can "reasonably meet the client's goals, needs, and priorities".

Source: Explanation of Practice 400-1

Problem: Consent and *Content*

Kahneman & Tversky (1981): Imagine the US is preparing for the outbreak of an unusual disease, expected to kill 600 people. Two alternative programs to combat the disease are proposed. Which do you prefer?

Program A: 200 people will certainly be saved.

Program B: there is a 1/3 probability that 600 people will be saved, and a 2/3 probability that nobody will be saved.

Program A′: 400 people will certainly die.

Program B′: there is a 1/3 probability that nobody will die, and a 2/3 probability that 600 people will die.

Problem: Consent and *Content*

Kahneman & Tversky (1981): Imagine the US is preparing for the outbreak of an unusual disease, expected to kill 600 people. Two alternative programs to combat the disease are proposed. Which do *experimental subjects* prefer?

Program A: 200 people will certainly be saved. *72%*

Program B: there is a 1/3 probability that 600 people will be saved, and a 2/3 probability that nobody will be saved.

Program A′: 400 people will certainly die.

Program B′: there is a 1/3 probability that nobody will die, and a 2/3 probability that 600 people will die. *78%*

Problem: Consent and *Content*

A financial version (Zweig, 2007): Imagine that you have $2,000 in the bank. Now I offer you a choice:

Do nothing, or

Take a 50/50 chance of either

- losing $300 or
- winning $500.

Most people do nothing.

Do nothing, or

Take a 50/50 chance of either

- ending up with $1,700 or
- ending up with $2,500.

Most people take the gamble.

The Point?

But you knew this. Framing effects – and discussions of “the framing effect” – are ubiquitous in professional discussions of our business these days.

And yet: If a patient or client can be manipulated into taking a particular course of action simply by the way in which information about it is presented, and tend to make very different decisions merely on the basis of the “frame” we palce around the alternatives, can we ever really be sure that we’ve gained “informed consent”, or helped them to make an “informed decision”?

More Bluntly …

"One always consents to an act under a certain description, and one might consent relative to one act description but not another." (Jason Hanna)

If I know that a client will accept a plan when I present it as having an 80% chance of success, but would reject the same plan when I present it as having a 20% chance of failure, what am I to do?

Legal vs Ethical

Some doctors treat consent forms as a mere formality, to be dealt with as quickly and dismissively as possible, so as to get to the real job of making the patient well.

Some financial planning practitioners treat the "what to do" part of a client's plan, or an investment policy statement, the same way.

What Is to Be Done?

Suggestion: Give both / all descriptions:

"Because the power and precise nature of framing effects are difficult to ascertain in concrete cases, the prudent course for professionals seeking … informed consent is to provide patients and [research] subjects with both sides of the story – the half-full and the half-empty presentations, the mortality and the survival frames – in the hopes of avoiding the gaps in understanding that framing effects may produce." (Faden & Beauchamp, 1986)

But: This is just another frame, really. What's more, the order of the presentation of the two options may itself undermine the attempt to provide a neutral frame.

Another Suggestion?

Perhaps the standard theories, which rely heavily on the concept of "self-determination" or autonomy, need revision in light of the problems raised by framing effects. What alternatives do we have?

One promising alternative is "Libertarian Paternalism", as expounded by Thaler and Sunstein – in, for example, their book *Nudge: Improving Decisions about Health, Wealth, and Happiness* (2008).

Nudging Us Along

To simplify dramatically: Thaler and Sunstein suggest presenting all the options, but in the order most likely to result in the decision we believe will be in the client's best interests – or making the default options the ones most likely to be in the client's best interests, but always allowing the client to make a choice away from the default.

This is "paternalism", in that we are openly trying to guide the client's choices; but it's "libertarian", in that we're allowing the client to make the final choice.

Our Clients

Our clients look for advice because they know they don’t know what they would need to know in order to make good decisions. We need to help them understand our recommendations, and to make what we believe are the best choices. Transparency and honest humility are key.

The Upshot:

1. Financial planning practitioners have a fiduciary duty to ensure that their clients understand the plan / investment policy statement, so as to be able to make an informed decision.

2. Physicians have a similar duty to obtain informed consent to a proposed plan of treatment– and the analogy is worth exploring.

3. But framing effects are endemic to these and all decision contexts – so (a) the concept of informed consent or decision may not be as important as we tend to think, and (b) a kind of "libertarian paternalism" may be justified as a way to respect autonomy and encourage well-being.