Practice Parameter for Child and Adolescent Forensic Evaluations

This Parameter addresses the key concepts that differentiate the forensic evaluation of children and adolescents from a clinical assessment. There are ethical issues unique to the forensic evaluation, because the forensic evaluator's duty is to the person, court, or agency requesting the evaluation, rather than to the patient. The forensic evaluator clarifies the legal questions to be answered and structures the evaluation to address those issues. The forensic examination may include a review of collateral information, interviews and other assessments of the child or adolescent, and interviews with other relevant informants. The principles in this Parameter suggest the general approach to the forensic evaluation of children and adolescents and are relevant to delinquency, child custody, child maltreatment, personal injury, and other court-ordered and noncourt-ordered evaluations. J. Am. Acad. Child Adolesc. Psychiatry, 2011;50(12):1299–1312. **Key Words:** Practice Parameter, child and adolescent psychiatry, custody, abuse and neglect, juvenile justice

Forensic evaluations of children and adolescents may be requested for a wide variety of legal settings, including the family, juvenile, civil, and criminal courts. There are more than 1 million divorces per year and courts may request assistance on custody issues. There are millions of abuse and neglect reports annually in which a mental health professional may have a role as a forensic evaluator or treating clinician. Each year, more than 2.7 million youth younger than 18 years are arrested and more than 1 million will have formal contact with the juvenile justice system. In 2008, 81,000 youth were held in juvenile detention and residential facilities.[1] There are clinical and forensic roles for child and adolescent psychiatrists in juvenile detention facilities. Expert psychiatric evaluation may be requested in tort litigation in the assessment of possible injury and psychiatric sequelae of trauma.

The role of the child and adolescent forensic evaluator is distinct and separate from that of a mental health treatment provider.[2] The principal duty of a child psychiatrist serving as therapist is to his or her patient. In contrast, the forensic evaluator's duty is that of an expert, with the responsibility of objective reporting of psychiatric findings to the person or agency requesting the evaluation. There are two critical characteristics of a forensic evaluation: there is no therapeutic relationship with the individual being evaluated and there are clear limits to confidentiality. Despite the different roles, a child and adolescent psychiatrist conducting a forensic assessment must still be aware of indicated and available treatments.

This Practice Parameter was written to provide guidance for child and adolescent psychiatrists conducting forensic evaluations, but it has broad applicability to other child mental health professionals. Thus, the term "forensic evaluator" will be used to indicate a child and adolescent psychiatrist or any other child mental health professional conducting an evaluation for the purpose of resolving a legal dispute, rather than for treatment. Psychiatrists who provide treatment in forensic settings, such as juvenile detention centers, are sometimes referred to as "forensic psychiatrists," but their evaluations are conducted for treatment purposes and will not be discussed here.

The principles stated herein are applicable to the evaluation of youth younger than 18 years. In this Parameter, the term "child" refers to adolescents and younger children unless explicitly noted. Unless otherwise noted, "parents" refers to the child's primary caretakers, regardless of

whether they are the biological or adoptive parents or legal guardians. This document presumes familiarity with normal child development and the principles of child psychiatric diagnosis and treatment.

METHODOLOGY

The list of references for this Parameter was developed by searching PsycINFO, Medline, Psychological Abstracts, PubMed, Ovid, Lexus-Nexus, and Legal Abstracts; by reviewing the bibliographies of book chapters and review articles; and by asking colleagues from the American Academy of Child and Adolescent Psychiatry (AACAP) Rights and Legal Matters Committee and the AACAP Juvenile Justice Reform Committee for suggested source materials. Search terms included forensic, juvenile, justice, psychiatry, psychology, legal, ethics, competency, custody, divorce, foster care, adoption, abuse, neglect, violence, trial, hearing, adjudication, litigation, waiver, evaluation, and expert witness. The searches covered the period from 1990 through 2009 and yielded about 500 articles. Each of these references was reviewed and only the most relevant (i.e., focusing in whole or in part on the issues and techniques specific to forensic evaluations by child and adolescent psychiatrists) were included in this document. Articles and chapters were evaluated on their basis in research findings and if these findings or reports were replicated, if the recommendations were supported by professional groups or a consensus of experts, and consistency with policy positions in other practice standards such as the Guidelines for Child Custody Evaluations in Family Law Proceedings by the American Psychological Association.[3]

DEFINITIONS

These are general definitions and the reader should be aware of local differences by jurisdiction.

Adjudication: A court proceeding in which a case involving a delinquent is reviewed and settled. As used in this guideline, it is the judicial process for determining delinquency in juvenile/family courts.

Best Interests of the Child: The rendering of decisions to fulfill the basic and developmental needs of the child.

Confidentiality: The right of an individual to have information that was disclosed in confidence not revealed to a third party. The duty to maintain confidentiality belongs to the psychiatrist.

Disposition: Placement decision after a finding of delinquency, whether incarceration, residential placement, or placement at home with treatment services.

Dusky Formulation: *Dusky v. US 362 US 402* (1960) was a landmark U.S. Supreme Court ruling that established a defendant's right to a competency evaluation before a criminal trial and defined the standards for adult competency: that a defendant must understand the charges against him and be able to assist counsel in his defense.

Expert Witness: A witness determined by the court as having specialized knowledge from training or experience and therefore having opinions that may be useful to the court in making a decision on a case.

Fact Witness: A witness who has personal knowledge about a case before the court. The testimony includes only those things the witness has directly experienced. It cannot include information told by others (hearsay) or opinions (expert testimony).

Fiduciary Responsibility: The expectation that someone acts in confidence or trust for the benefit of another within a defined relationship.

Miranda Warnings: The rights of a suspect to be informed that he or she has the right to refuse to give any self-incriminating information and that he or she is entitled to have legal counsel present at any interrogation. These rights were established by the U.S. Supreme Court in *Miranda v. Arizona 384 US 436* (1966).

Parens Patriae: The legal principle for the state to act as the authority to care for those citizens unable to protect themselves, such as minor children.

Police Power: The general power of the state to protect its citizens.

Privilege: The legal rule that protects certain information from disclosure in court. Privilege belongs to the individual.

COMMON TYPES OF CHILD FORENSIC EVALUATIONS

Juvenile Justice

The juvenile court is focused on rehabilitation and helping the children and adolescents who

enter its doors. This is reflected in the nomenclature: a youth is taken into custody, not arrested; appears at a hearing, not a trial; is adjudicated, not tried; and there is a disposition, not a sentence.[4] Because of this original focus on help rather than punishment, many of the due process procedures and rights for the adults in criminal court were not thought necessary in juvenile proceedings.[5] Over the years, court cases and legislation have changed this with the introduction of many features of criminal court into the juvenile justice system.

Youth who are charged with particularly violent crimes may be transferred to adult criminal court. There is considerable variation among the states as to what age/crime combinations may be waived to criminal court. Youth may be waived in different manners: judicial waiver, after a hearing; discretionary waiver, typically by the prosecutor; and mandatory waiver, in which the age of the youth plus the nature of charge may automatically subject a youth to adult prosecution. Youth who remain in juvenile court will go through the adjudication process.

There are numerous reasons that a child and adolescent forensic evaluator may consult to juvenile court. Common situations include the competency to understand Miranda rights and the competency to stand trial; evaluation for a waiver or transfer hearings; and evaluations for whether a child should remain in a facility or can return home while awaiting adjudication.

Forensic evaluation regarding disposition is one of the most common types of evaluations in juvenile court. It focuses on the balance between a *parens patriae* model (promoting the needs and best interests of children and adolescents) and the police power of the state (promoting the protection and general welfare of the entire community). As a forensic evaluator, one should consider the youngster's treatment needs and the need for a restrictive setting that will allow a level of protection for the youth and for others. More often than not, the more restrictive settings, such as juvenile or adult correctional settings, have fewer mental health and education services available.[6]

Child Custody

Divorce is common in the United States, and frequently individuals who are divorcing develop a plan to co-parent their children. However, in some divorces involving children, there is a custody dispute and legal proceedings rather than agreement. In such cases, a child custody evaluation conducted by a mental health professional may assist the court in making the final decisions on custody, visitation, and parenting time arrangements. A custody evaluation may be indicated for the following situations: one or both parents have a significant mental disorder that affects his or her parenting skills; the child has a mental disorder that should be taken into consideration; domestic violence (including abuse of a parent, sibling, or the child) has been alleged or documented; concern about a child's relationship with the noncustodial parent being damaged by actions of the custodial parent intended to alienate the noncustodial parent; or it is thought that the child may have a significantly better relationship with one of the parents.[7]

A competent child custody evaluation requires skill and knowledge in the complexities and dynamics of child custody. There needs to be an understanding of family relationships, interpersonal dynamics, child and adolescent developmental issues, and a familiarity with family law in the evaluator's jurisdiction. The evaluator should be prepared to thoroughly assess allegations made about the fitness of either parent, which includes each parent's ability to encourage a relationship with the other parent. The overriding consideration in child custody evaluations is usually the best interests of the child.[7] Guidelines for custody evaluations have been published.[8]

Child Maltreatment

Each year, there are about 3 million reports of abuse and neglect in the United States. Of these, about two thirds are screened for investigation or assessment.[9] There is a need for mental health professionals to assist in the evaluation process of children who may have been abused or who were found to have been abused. These evaluations are often conducted in collaboration with psychologists, pediatricians, and social workers. Working as a forensic evaluator, the practitioner may evaluate children in a private practice for a forensic purpose; evaluate children and collaborate with other mental health professionals in a government agency, such as protective services; or work with an interdisciplinary team at a pediatric medical center. The evaluator may assist the court in determining what happened to the child; make recommendations regarding

placement or treatment; or offer an opinion on the termination of parental rights.

Child and adolescent psychiatrists have an important role in the forensic evaluation of youngsters who may have been sexually abused. Because there are typically no physical findings in child sexual abuse and there are no witnesses, the only source of information may be the child's statements to family members, friends, and investigators. It is important to understand how information can be elicited about incidents in a fashion that does not lead or prompt the child in a way that undermines or calls into question the answers or observations.[10]

Personal Injury

There are several circumstances in which a forensic psychiatric evaluation might be indicated in the context of a personal injury lawsuit. For instance, a child might be involved in a serious motor vehicle accident and sustain physical injuries and psychiatric complications, such as posttraumatic stress disorder. A child might experience the violent death of a parent and then sue the individuals responsible for the parent's death. A child might be sexually abused by a school teacher and then sue the teacher and the local school system. In these cases, the role of the forensic psychiatrist is typically not to assess liability (for instance, whether the school system was responsible for the teacher's misbehavior) but to assess damages (that is, whether the child suffered any temporary or long-lasting psychological injury as a result of the alleged abuse).

Conducting this type of evaluation requires an understanding of how an injury may have short-term and long-term consequences. In addition to determining if a child is suffering from a mental disorder or not, the child and adolescent psychiatrist is expected to evaluate whether or not the alleged injury or incident in question contributed in any way to the current condition of the child. The four Ds of the tort of negligence or injury are duty, dereliction (breach), damage, and direct causation. In the case of professional negligence, duty exists when a professional relationship has been established. Dereliction exists when the professional neglected his or her duty. Damages refer to evidence that a loss or harm has resulted from the dereliction of duty. Direct cause refers to proof that the loss or harm was directly caused by the actions in question or by a failure to act and that the harm would not otherwise have occurred.

The psychiatrist may be asked whether or not there could be other etiologies to a child's presentation beyond simply an injury. This evaluation requires a thorough knowledge of the onset and course of any symptoms, the experience of the alleged injury and any subsequent actions directly resulting from it, and an estimation of development and mental health before the alleged injury. The evaluator will be asked to address short- and long-term treatment issues and often asked to give a long-term prognostic opinion.

PRINCIPLES

Principle 1. Clinicians who provide mental health treatment for children and adolescents should clarify their role if those children are involved in legal proceedings.

A professional who has, or intends to develop, a treatment relationship with a child, adolescent, and the family has responsibilities to the patient that will conflict with the responsibilities a forensic evaluator has to an attorney or judge who has requested an evaluation.[11,12] If a therapist who has established a treatment relationship with a child assumes a forensic function, his or her role may become confused and the therapeutic relationship could be damaged. At the same time, this role confusion may interfere with the objective evaluation requested by the court. Therapists are less likely to question the patient's narrative or insist on corroborating sources. Efforts to offer helpful testimony may result in disclosure of confidences that will embarrass the patient or the family.[2] Except in unusual circumstances (such as in rural areas in which no forensic evaluators are available), clinicians in a treatment role should not serve in a forensic role for the same child or adolescent.

Despite efforts to avoid the legal arena, a treating psychiatrist may be court ordered, subpoenaed, or asked by the patient to testify on a particular question. The treating psychiatrist should always contact the patient or the patient's parents regarding any requests for information about the patient. In some states, testimony or records cannot be provided without the patient's consent. Before releasing records, the patient or the patient's parent(s) should be given the opportunity to object to the subpoena. If the patient's

objection to the subpoena is overruled, a court order may be issued for the records or the clinician's presence for testimony. Only under a court order can a professional providing treatment testify without written permission of the parent and minor (depending on the youth's age and the state's legal code).

If asked to testify, the treating psychiatrist may find it useful to review any requests with an attorney familiar with the local laws to learn options in handling the request, and how best to protect the evaluator and the patient. If treatment is being provided in a clinic, hospital, or agency, the treating psychiatrist should inform the legal counsel of the facility because the records belong to the facility, not to the individual psychiatrist. The treating psychiatrist should consider retaining an attorney if there are any questions about his or her appropriate role.

All states require a response to a court order. Some states may not require compliance with a subpoena request, but a response is always mandatory. The response may be an objection to the subpoena or an attorney may file a motion to quash the subpoena. Failure to respond altogether may leave the mental health professional open to a contempt-of-court action.

The request for testimony may ask that the forensic evaluator provide information through a report, affidavit, deposition, and/or court testimony. A deposition is given under oath, as is court testimony. A review of the subpoena would clarify whether the psychiatrist is being called as a fact witness or expert witness. The clinical formulation and diagnosis, the treatment provided, and the medical record are facts. Estimates of the patient's prognosis or opinions on the forensic issue before the court are examples of expert testimony that may be requested and are distinct from fact. If the psychiatrist has not conducted a forensic evaluation, there is no obligation to have a forensic opinion. For example, the clinician who is treating a child involved in a child custody dispute is under no obligation to form an opinion as to what custodial arrangement is in the best interests of the child. A thorough custody evaluation is necessary to form an expert opinion on custody or visitation.

Principle 2. The role of the forensic evaluator is distinct from that of treatment provider and all involved with the child must understand and respect the distinction between these functions.

The forensic psychiatric evaluation of a youth is inherently different from a traditional clinical psychiatric evaluation for treatment purposes. The forensic evaluator's role is to assist the court in answering a legal question by providing information. The typical aims of the child forensic evaluation are to identify the stated reasons and factors leading to the referral; to obtain an accurate diagnostic picture of the youth's developmental functioning and the nature and extent of the youth's behavioral difficulties, functional impairment, and/or subjective distress; to identify potential individual, family, school, peer, or other environmental factors that may account for problems that have resulted in the legal involvement or claimed impairment or distress; and to rely as much as possible on research and scientific studies rather than subjective hunches in coming to an opinion (Table 1 presents more information on differences between clinical and forensic evaluations).

In the first meeting or telephone contact with the party requesting the forensic evaluation (attorney for the defense, the state or plaintiff, or the court), the forensic evaluator must identify potential role conflicts, boundaries, and expectations of the proposed consulting relationship to ensure that the evaluator will be able to complete an objective and comprehensive evaluation. The traditional doctor–patient relationship is not developed between the forensic evaluator and the youth being evaluated. The forensic evaluator's fiduciary duty is to the court or retaining agency (e.g., law firm, school department); the treating mental health professional has a fiduciary duty to the person being evaluated.

At the onset of the interview, the evaluator should review the following with the child or adolescent and parents: the purpose of the evaluation; the process (for instance, a solo evaluator or a team); agency of the evaluator; whether the evaluation is being electronically recorded; what will happen to the information obtained (e.g., verbal or written report); and that the evaluation is not for treatment purposes. The examiner should provide warnings regarding the lack of confidentiality to the parent and to the youth (according to the youth's developmental maturity). Although not legally required, it is advisable to obtain a youth's assent to the interview process.

Privacy refers to a person's right to keep certain information protected from public at-

TABLE 1 Differences Between Clinical and Forensic Evaluations

	Clinical Evaluation	Forensic Evaluation
Purpose	relieve suffering	answer a legal question
Relationship	doctor–patient	evaluator–evaluated
Client	the patient	the court, attorney, or other retaining agency
Agency	fiduciary duty to patient; duty to patient's best interests; patient's welfare is primary	fiduciary duty to court, attorney, or other retaining agency
Objective	help heal the patient	by report or testimony, inform and teach the retaining agency and fact finder, i.e., judge or jury
Privacy	confidentiality usually applies	privilege may apply
Process	establish diagnosis and treatment plan	conduct objective evaluation; diagnosis may be nonessential
Treatment	treatment rendered	no treatment rendered, although it may be recommended
Sources	self-report; occasionally outside information; some collateral records	extensive collection of data including serial interviews, information from additional historians, review of records and documents
Bias	therapeutic bias occurs; desire for patient to get better; willingness to advocate for patient	purposeful lack of bias; attempt to be neutral and objective; no investment in outcome
End product	establish therapeutic relationship; improve well-being of patient	answer the referral question in the form of a verbal or written report; deposition; and/or testimony

Note: Reproduced with permission from Penn JV. Child and adolescent forensic psychiatry in Rhode Island. Med Health R I. *2005;88:310-317*[12]

tention or knowledge. Confidentiality is a form of privacy that creates the ethical and legal obligation for mental health professionals to not disclose information communicated by the patients or people being evaluated. *Privilege* is also a form of privacy; it refers to the legal rule that protects certain information from disclosure in court.[13] An evaluated person can waive his or her right to privilege. The waiver may be implied if there is a court order because the purpose of the evaluation is for the presentation of material to the court and the involved attorneys. Nonetheless, a clear explanation of confidentiality to the evaluated person and then allowing the person to explain what he or she understands is ideal. If there is a court order, although there is no need for an evaluated person to sign an authorization to release information, it may be helpful for the person to sign a statement that he or she understands where the information will be sent. If there is no court order, it is advisable for the evaluator to ask the evaluated person to sign an authorization indicating where the information will be sent. It is unclear the extent to which the Health Insurance Portability and Accountability Act applies to forensic evaluations.

Principle 3. The forensic evaluator should have adequate education, training, or experience.

To perform a competent forensic evaluation within the context of court involvement, one must have a minimum set of clinical training and experience, knowledge, requisite skills, and, if possible, forensic supervisory training or experience.[14,15] In addition to child and adolescent psychiatrists, many child forensic evaluations are performed by adult psychiatrists, psychologists, social workers, psychiatric nurses, and other clinicians. Most psychiatrists who perform forensic evaluations of juveniles do this in addition to their standard clinical work. Regardless of formal training, the forensic evaluator should be knowledgeable of normal growth and development and child psychopathology. A competent assessment will reflect knowledge of the current literature. Prior clinical or forensic experience in the area being assessed is helpful. The American Board of Psychiatry and Neurology offers certification in forensic psychiatry.

Principle 4. The forensic evaluator should have an understanding of the pertinent legal system and system of care.

Effective forensic consultation to family, juvenile, civil, and criminal courts requires knowledge of the organizational structure of the courts and related agencies, differences between the courts and clinical settings, the legal process for juveniles, how this differs from adults, and other legal issues such as levels of proof, testimony,

and court proceedings. Attempting to complete a forensic evaluation within the juvenile court without an understanding of the system is a risk to the evaluator and the youth being evaluated.

In addition to knowing the operations of the judicial system, it is important to understand the court's interface with other involved agencies. The forensic evaluator should have an understanding of existing child welfare, educational, medical, and mental health care systems within the area and supported by the court within the state and out of the state.

When traveling to another state to conduct a forensic evaluation, it is important to review the laws of that state regarding professional licensure. Each state has its own rules and regulations regarding the licensure of professionals who conduct evaluations and testify. It might be necessary to obtain some form of temporary licensure to conduct an evaluation in another state.

Principle 5. The forensic evaluator should clarify the question being asked by the person or agency making the referral.

Sometimes, the forensic evaluator avoids answering or forgets to answer the question that was originally posed by the referral source. It is also a common mistake for a novice forensic evaluator to include more conclusions and recommendations in the report than was asked for. This is not helpful to the readers of the evaluation and may result in conflict regarding the evaluation and, at times, confusion for the court. Ordinarily, only the questions asked within the court order or in the letter from the referring attorney should be addressed. If additional questions are posed by the court or one of the attorneys, the evaluator may request that they be written, preferably within a court order or a letter, to minimize any confusion of the evaluator's role.

The forensic evaluator may need to help the referral source formulate the question in a clear manner. For example, in a criminal case, questions might include: "What was the defendant's state of mind at the time of the alleged crime with respect to insanity or mitigation?," "What was the defendant's state of mind at the time of his interrogation by investigators with respect to his competency to waive his Miranda rights?," or "What is the defendant's state of mind at the present time with respect to his competency to stand trial?" In a medical malpractice case, questions might include: "Did the practitioner follow the standard of care?," "Was the plaintiff injured by what the practitioner did?," or "Will the plaintiff need treatment in the future?" In a child custody dispute, the court may want the evaluator to assess the child's relationship with both parents and make specific recommendations regarding custody and visitation arrangements. Conversely, the court may simply want an evaluation of the psychosocial strengths and weaknesses of the parents, with no conclusions or recommendations at all regarding the ultimate issue, i.e., the custody and visitation arrangements. It is essential to clarify the questions being posed before starting the forensic evaluation.

Principle 6. The forensic evaluator should know and understand the applicable legal test and standard of proof for the question being evaluated and focus the evaluation on those issues pertinent to that test.

After the forensic evaluator has clarified the question or questions posed by the referral source, the evaluator should make sure he or she understands the legal test for that particular question or issue. For example, if the question pertains to competency, the defendant's present mental state, it is important to know the criteria for competency in the relevant jurisdiction.[16]

If the question pertains to a waiver from a juvenile court to a criminal court, it is important to know the statutory or precedential criteria for a waiver that the court must consider. For instance, depending on the jurisdiction, the forensic evaluator may be asked to provide a professional opinion on a youth's potential for dangerousness, the risk of future criminal behavior, his or her amenability to treatment, and what level of restrictive environment is necessary to assist in treatment and to protect the constituents of the state.

If the task is to conduct a child custody evaluation, the forensic evaluator may need to address a range of issues including factors related to the parents (e.g., parenting skills, physical health, mental health, substance abuse, previous and current involvement in the child's care, and willingness to collaborate with the other parent in raising the child), factors related to the child (e.g., mental health, attachment to each parent, preferences regarding his or her living arrangements), and factors regarding the family (e.g., history of domestic violence, allegations of abuse, allegations of parental alienation).

In these examples, the particular factors to consider may depend on federal law (if the case

is in federal court), state law (if the case is in a state court), or simply local practice. A forensic evaluator is not expected to know the important criteria or factors for every type of forensic evaluation that might arise. When in doubt, the forensic evaluator may ask the referral source for an explanation of the factors that apply to the case being considered. This should be clarified before starting the forensic evaluation.

There are several standards of proof or levels of certainty that must be established for a judicial decision to go a particular way. The least exacting level of certainty is "reasonable suspicion." In clinical practice, that may be a sufficient level of certainty to report a suspected instance of child abuse. In civil cases, the side prevails that establishes a "preponderance of the evidence." This can be expressed quantitatively as being 51% certain. In some cases that involve psychiatric evidence, the level of certainty is "clear and convincing proof," which is proof necessary to persuade by a substantial margin, which is more than a bare preponderance. For example, the proof that child abuse has occurred or the basis for terminating parental rights must be clear and convincing. Criminal cases require proof that is "beyond a reasonable doubt." When physicians testify in court, they frequently are asked if their opinions are given with "a reasonable degree of medical certainty." Rappeport proposed that reasonable medical certainty is a level of certainty equivalent to what a physician uses when making a diagnosis and starting treatment.[17] The implication is that the degree of certainty would depend on the clinical situation.

Principle 7. The forensic evaluator should determine the amount of time, collateral information, and resources that are necessary to complete the evaluation.

Focusing on the forensic question and providing information in a manner that is most helpful to the court require a systematic approach. The forensic evaluator must not jeopardize the evaluation by minimizing the need for time to complete the evaluation properly or to collect, review, and evaluate all pertinent sources of information.

Many times, attorneys will contact forensic experts shortly before a court hearing. In those situations, it is imperative that the forensic evaluator make clear the time necessary to do a proper assessment and suggest that a continuance or delay be sought. It may be necessary to conduct several interviews with the youth. The evaluator should not shorten the time necessary to complete the evaluation. If feeling rushed by an attorney, the evaluator may respond in writing regarding the need for increased time. It may also be advisable to communicate with the judge regarding the need for additional time. It is typically helpful to clarify the various components of the evaluation.

It is also important for the forensic evaluator to review previously completed reports, summaries, and test results before beginning the evaluation. The forensic evaluator must determine what additional records are necessary, who should be interviewed, and what further tests or consultations are needed for completion of the evaluation. In some cases this can be done before the interview; in others, issues may arise during the interviews that highlight areas that need to be explored with further outside data. If a forensic evaluator does not have access to all the relevant data, this does not preclude arriving at conclusions. However, a caveat must be stated that the opinions are based on the data available and that the opinion of the examiner could change if additional data were provided.

The forensic evaluator should approach each evaluation with sensitivity to the youth's unique developmental needs and vulnerabilities. The amount of records and collateral information that should be obtained will depend on the nature of the evaluation and the reliability of information already present. For example, in evaluating an adolescent, pediatric records from the preschool period may not be very important in assessing the evaluated youth's current competency to stand trial but may be crucial in special education litigation with a school system involving the question of whether a youth has autism.

It typically takes a lot of effort to obtain comprehensive collateral information including police reports, educational reports, prior mental health history, medical history, social service evaluations, and prior court hearings. If all the collateral material has not been received and reviewed, the forensic evaluator may begin the evaluation and then determine what else is necessary. However, if important records or collateral information have not been provided, the evaluator should send a written request for the required information. If, for some reason, a party is refusing to make this information available, because of a lack of consent or another reason,

the person or agency that made the referral needs to be made aware of this.

Depending on the circumstances, the forensic evaluator may prefer to receive written records of previous psychiatric treatment and/or speak with the clinicians involved in the previous treatment. For example, in conducting some evaluations, it may be sufficient or even preferable to talk to the evaluated person's former therapist rather than review the written records. In taking this approach, it is possible to protect the past treatment records from being exposed unnecessarily in court.

Principle 8. The forensic evaluator should carefully consider the impact of the presence of parents or of the youth's attorney during the interview.

Clarification of who will be attending the assessment is important. If others will be present, the evaluator should recommend guidelines for their conduct and confidentiality. Any conflicts will be addressed by the court.

The youth's attorney may want to be present at the evaluation. This is not an uncommon request, and in some states the mental health code and laws require the presence of the youth's attorney. The attorney may agree to sit out of direct sight (e.g., to the side of the youth) and not participate unless invited to do so by the evaluator. All observed communication, verbal or nonverbal, between the attorney and the youth will be considered data in formulating the opinion.

It is extremely uncommon that a court would require a parent to be present. Having them present for at least part of the evaluation for obtaining historical information, assessing the interaction with the parent, and at times assisting in the evaluation can be helpful. For example, youth being evaluated within juvenile court at times can be resistant and quite guarded in the evaluation process. More often than not, the assistance of a parent to encourage cooperation is helpful. Once accomplished, it is beneficial to interview the youth alone. With custody evaluations, it helps for the evaluator to spend some time assessing children with each parent so there can be a better appreciation of the relationship with each parent.

Principle 9. The forensic evaluator should be competent in conducting evaluations in a culturally sensitive manner.

Minority youth are over-represented in foster care and the juvenile justice system.[18] This may reflect, in part, higher rates of mental illness in these populations and a lack of access to treatment for these conditions.[19] Often families seek treatment only under pressure from schools or the court, resulting in higher rates of involuntary commitment and premature termination.[20]

A culturally competent forensic evaluator will be sensitive to and accepting of cultural differences. They will acquire knowledge about the culture of the evaluated youth and the management of similar forensic issues in the justice system of that culture. If the evaluated youth or the parents are not fluent in English, interpreters who are familiar with psychiatric and legal terminology should be readily available. The child should not be expected to serve as an interpreter. The evaluator should inquire about an immigrant family's experience with the courts in their home nation. Adverse experience may influence their attitude about the current problem.

It may be necessary to consider cultural factors in recommendations for a specific case. In a custody evaluation, the examiner may wish to consider, among other factors, one parent's willingness to support the child's involvement in the cultural traditions of the other parent. In the disposition of a case in juvenile court, referral to a treatment setting that is culturally competent may increase the likelihood of completing treatment.

Principle 10. The forensic evaluator should consider whether to record the forensic evaluation by audio or video recording.

The American Academy of Psychiatry and the Law (AAPL) created a task force to consider the videotaping of forensic interviews. In 1998, the task force published its findings and concluded, "AAPL does not support a blanket rule of requiring videotaping in all forensic interviews. The Task Force finds the option of videotaping to be an ethically acceptable medical practice."[21]

There are several pros and cons to consider regarding the recording of a forensic interview of a child or adolescent. Advantages of recording the interview include: the record of the evaluation will be accurate and complete, especially compared with handwritten notes; the evaluator can review the recording before preparing the written report and testifying; the electronic record will help clarify any accusations of misinterpretation or misstatement in the forensic report; and the electronic record can be reviewed by individuals who need to see exactly what was

stated in the evaluation, including future evaluators, opposing experts, and even the judge and jury at a trial. If the initial forensic interview of the child was properly recorded, it may decrease the number of additional, subsequent interviews. Recording interviews communicates to the attorneys and the court that the evaluator is comfortable with the scrutiny of others, that there is no bias, and is collecting pertinent information in a methodical manner.

Disadvantages of making an electronic record of the forensic interview include: the child or adolescent being evaluated may become anxious or intimidated by the recording device; it may be inconvenient to make an electronic recording in some evaluation settings, such as a cell at a detention center; the recordings that are generated must be stored in a secure manner and be available for duplication when records are requested; and there are legal limitations to record or copy some psychological testing because of copyright issues.

Principle 11. The forensic evaluator should have an understanding of psychological testing and make use of it as appropriate.

Psychological testing is important in some situations, but not in others. For example, in child custody disputes when there are significant allegations and inconsistency in presentation, a comprehensive psychological battery, including tests such as the Minnesota Multiphasic Personality Inventory–2 Restructured Form and the Millon Clinical Multiaxial Inventory–III, can be helpful in further assessing personality, deceptiveness, and defensiveness in the parents. Also, there are tests that help assess the child's relative attachment to and perception of the parents.[7] Achievement tests, cognitive testing, and detailed neuropsychological assessments can be helpful in personal injury cases. The use of specialized psychological tests in assessing juvenile competency to waive Miranda rights and proceed with adjudication may also be of benefit.[22]

Principle 12. The forensic evaluator should be aware of the types of and level of clinical services available and different indications when making treatment or placement recommendations.

Many youth who come to the attention of the court will have treatment and placement needs, and the forensic evaluator may be asked to make recommendations. The goal is to identify the most appropriate evaluation and treatment services that can be provided in the least restrictive manner. The evaluator should also be aware of the research supporting the types of services available. The evaluated youth may present with complex problems (e.g., mental health, substance abuse, sexual offending, setting fires) that will require a high level of security whether in a mental health or a juvenile justice setting. For youth who present a risk of harm to self or others, there may be an urgency to the request for placement recommendations.[23,24]

The courts will consider the evaluator's recommendations and other information to make a disposition of the case. The court may initiate additional referrals for mental health and/or substance abuse treatment, outreach and tracking, vocational and life-skills training, educational interventions, parenting education, relapse prevention, and other interventions. The court might order an out-of-home placement into a group home, foster care, in-state or out-of-state residential treatment, or other type of treatment program for an identified period.

Many court-ordered placements are implemented through probation departments, although there may be overlap with the state's department of human services, youth social services, and educational agencies. Implementation of the recommended treatment plan depends on available resources. Some children have health insurance that will pay for some elements of treatment; other youth are referred to treatment provided by the public sector. Some court systems will be able to fund placement in a residential program. Some states have secure residential facilities, but many do not. The few openings in the private sector may prove prohibitively expensive. If a recommendation is made for an out-of-state facility, the evaluator must know whether that state allows for children on probation to be placed out of state.

Principle 13. The forensic evaluator should be prepared to document the findings of the evaluation and the opinions reached in a report.

The initial request for evaluation may specify that the findings of the evaluation will be made in a report and will indicate who should receive a copy of the report. Typically a report ordered by the court would be submitted to the court and both attorneys. At other times, an attorney requesting an

evaluation may not want a report but is interested in discussing the findings of the evaluation.

When writing a report, the forensic evaluator should remember the audience. The report should not use medical language that would be difficult for the court and others to understand. If specific medical, psychiatric, or psychological terminology is used, it must be defined. The information can be defined in the text or at the bottom of the page. The report should be carefully reviewed for typographic and grammatical errors.

The report should document the source of the referral; the forensic question being addressed; sources of information, including dates, duration, and participants of all interviews and documents reviewed; what was told to the evaluated youth and parents regarding the evaluation, including notice of the limits of confidentiality; what consent or assent was obtained; a summary of pertinent findings, including all data that constitute the basis for the opinion being rendered; the forensic opinion on the questions asked; and the reasoning used in moving from the data to the opinions.

It is important to separate the data section from the opinion section. Some evaluators prefer to place a brief statement of the opinion near the beginning of the report, whereas others prefer not to mention the opinion until after the basis for it is presented. Most forensic evaluators agree that no new data should appear in the opinion section of the report. The forensic evaluator should address all questions posed by the referral source. If specific questions cannot be answered, the evaluator should explain the reason.

In cases where the forensic test is comprised of several factors or prongs, each prong should be addressed separately. For example, in a jurisdiction in which the Dusky formulation is used to test for competency to stand trial, the opinion section should address whether the defendant has sufficient current ability to consult with a lawyer with a reasonable degree of rational understanding, and whether the defendant has a rational and factual understanding of the proceedings. A reference section at the end of the report makes the report somewhat cumbersome and difficult to read; however, references may be needed and have specific relevance to the question being answered.

Principle 14. The forensic evaluator should be prepared to testify in depositions and in court.

Testifying can be provoke anxiety. There is much written about the process that can add to the witness's comfort.[25] The forensic evaluator's skills improve through observing the testimony of other experts and repeated personal experiences in court. The opportunity to participate in didactic training and have practical experience in a supervisory setting is recommended.[13]

Before appearing in court or at a deposition, the evaluator should carefully review the case file, the report, and documents that have information critical to the case. It is acceptable to meet with an attorney before the deposition or court testimony, but this meeting should not change the forensic evaluator's opinion.

Appropriate professional attire is necessary for court appearances. An expert should usually direct responses to the finder of fact (i.e., the judge in a bench trial or the jury in a jury trial). The setting may make it difficult to face the judge from a witness stand, but an attempt should be made to focus in the appropriate direction. All responses should be delivered verbally because the testimony is transcribed. Do not nod in response or use utterances such as "uh-huh."

Responses should be well thought out. In cross-examination, if pressured for quick responses, the evaluator should not follow this lead but rather take his or her time. The evaluator should respond directly to the questions being asked. If asked a "yes or no" question that requires an elaborate answer, the evaluator should ask to give a detailed answer and let the court determine whether an answer can be explained further. Regardless of how many times a question is asked or how it is framed, the evaluator's response should be consistent. At the same time, there are questions that may be asked that potentially could change an opinion. It is reasonable with these types of questions to respond with a "probability" or a "possibility" type of response. At the same time, when hypothetical questions are being asked, the evaluator should pause before responding to allow counsel to potentially object.

Although court is an adversarial setting, the evaluator should not engage in an argument. The evaluator should listen to the question being asked, pause, think about the question, and then respond. Most forensic evaluators recommend that a witness not respond in an antagonistic or humorous manner. The evaluator should be cautious if more than one question is being asked. The evaluator should ask that a question be repeated if it is not understood.

Depositions take place out of the presence of the

judge; because there is no judge to rule on objections, the general rule is for the witness to answer the question even if an objection is made. The judge later will rule on the objection and the admissibility of the answer. However, if the attorney who retained the expert directs the expert not to answer, an answer need not be given. It is important to remember, however, that the retaining attorney's duty is to the client, not to the expert. Situations can arise in depositions where the expert may refuse to answer, even though the retaining attorney does not object. For example, the evaluator may feel the question is overly personal and not relevant. Such questions may involve the evaluator's personal history and income. In most jurisdictions, witnesses need to answer questions regarding fees in the case and the percentage of income derived from forensic work, but not questions about total income. The relevance of personal details often depends on the case: asking an expert whether he or she was sexually molested may be relevant to bias in a case involving sexual abuse of a child, but not relevant in a case involving malpractice for a patient's suicide.

It is useful to keep a record of all cases in which the expert has provided testimony. The Federal Rules of Civil Procedure require that the expert submit a list of all testimony provided in the previous 4 years.[26] Failure to provide such a list will disqualify the expert from testifying. Many state jurisdictions have adopted the federal rules or have developed similar requirements.

Principal 15. The forensic evaluator should consider the pros and cons of whether a child should testify.

In some circumstances, the forensic evaluator may be asked to express an opinion on whether a child should be allowed or required to testify. For instance, the question may relate to the psychological risks and benefits to the child if the child testifies. This may be the issue in a case involving allegations of sexual abuse and the child is expected to testify in the presence of the alleged perpetrator. Usually, there are pros and cons to the child's testifying in such a situation. Advantages include: the child can achieve a sense of accomplishment and mastery by telling in court what he or she experienced or witnessed; and the child may take pride in being part of the legal processes. Disadvantages include: the child may be quite anxious at confronting the alleged perpetrator; testifying may exacerbate psychological symptoms; and the child may feel uncomfortable or embarrassed during cross-examination.

There may be times when a child's testimony is required, even though it is unpleasant for the child. The forensic evaluator may suggest that the court consider alternatives to face-to-face testimony, such as electronically recording the proposed testimony or using closed-circuit video monitoring of the testimony, consistent with local law.

Other considerations for whether a child should testify are a child's competency to testify or the reliability of a child's statements. Competency to testify generally involves the assessment of four factors: understanding the requirement to tell the truth; the ability to accurately perceive events at the time they occurred; the ability to store these thoughts in memory for a period; and the ability to accurately describe these memories in one's own words. Competency to testify may be impaired by the child's normal developmental immaturity, by a developmental delay, or by some form of mental illness. Also, the child's memories could have been distorted by intervening events or by inappropriate repetitive or suggestive questioning.

Principle 16. The forensic evaluator should adhere to the ethical guidelines of his or her respective professional organizations.

The activities of child and adolescent forensic psychiatrists may be governed by the ethical principles of several professional organizations. The American Medical Association publishes and periodically updates the *Code of Medical Ethics*.[27] The American Medical Association also publishes extensive commentary on ethical issues in *Current Opinions with Annotations,* and these discussions sometimes relate to forensic evaluations.[28] The American Psychiatric Association publishes and periodically updates *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry*.[29] Occasionally, these annotations relate to forensic psychiatry.

The AACAP publishes and periodically updates the *Code of Ethics*.[30] This document distinguishes clinical and forensic activities as follows: "Some professional responsibilities, however, do not involve the potential treatment needs of a child or adolescent; rather, consultation . . . is requested by, and provided to, societal entities, i.e., schools, social agencies, and juvenile justice systems. In these circumstances, the child and adolescent psychiatrist must, from the outset, clearly delineate the professional's limited role, to both the child or adolescent and the family. Further, the child and adolescent psychiatrist should also note that the professional's primary

responsibility for rendering scientifically sound medical opinion may run counter to the preferences or needs of the child."[30]

The AAPL publishes and periodically updates *Ethics Guidelines for the Practice of Forensic Psychiatry*.[31] Some of this document pertains specifically to the forensic evaluation of children and adolescents. For instance, "In custody cases, honesty and objectivity require that all parties be interviewed, if possible, before an opinion is rendered. . . . Any comments on the fitness of a parent who has not been interviewed should be qualified and the data for the opinion clearly indicated."[31]

The ethical principles for forensic psychiatric evaluations of minors have not been fully developed. Issues that should be considered by professional organizations include assent and consent, susceptibility to suggestive questions, and deference to an authority figure. These issues are more problematic with children and adolescents than with adults.

PARAMETER LIMITATIONS

The AACAP Practice Parameters are developed to assist clinicians in psychiatric decision making. These Parameters are not intended to define the sole standard of care. As such, the Parameters should not be deemed inclusive of all proper methods of care or exclusive of other methods of care directed at obtaining the desired results. The ultimate judgment regarding the care of a particular patient must be made by the clinician in light of all of the circumstances presented by the patient and his or her family, the diagnostic and treatment options available, and available resources. &

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The AACAP both develops patient-oriented and clinician-oriented Practice Parameters. Patient-oriented Parameters provide recommendations to guide clinicians toward best assessment and treatment practices. Recommendations are based on the critical appraisal of empirical evidence (when available) and clinical consensus (when not), and are graded according to the strength of the empirical and clinical support. Clinician-oriented Parameters provide clinicians with the information (stated as principles) needed to develop practice-based skills. Although empirical evidence may be available to support certain principles, principles are based primarily on clinical consensus. This Parameter is a clinician-oriented Parameter.

The primary intended audience for the AACAP Practice Parameters is child and adolescent psychiatrists; however, the information contained therein may also be useful to other mental health clinicians.

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