
10 THINGS ABOUT: FORENSIC PRACTICE

- 1.** The most frequent areas of forensic psychiatry practice include: providing an expert psychiatric opinion in a civil trial on behalf of a plaintiff or defendant, performing independent medical examinations (IMEs), reviewing medical records for insurance companies, performing court-ordered child custody evaluations, and evaluating defendants in criminal cases.
- 2.** The individual hiring you should clearly define the psychiatrist's role and the type of evaluation being requested. It is preferable that assignments be in writing. However, since the written request may be subject to discovery, many attorneys will send only a cursory retention letter. If necessary get the information needed verbally.
- 3.** Make certain the hiring party supplies you with the resources needed to conduct a careful and reasoned assessment. If you are asked to perform an evaluation and the hiring party does not want you to have prior information, you should consider not accepting the assignment because it may adversely affect the quality of the evaluation.
- 4.** In general, if you are the treating psychiatrist, you should not agree to be an expert or to perform an evaluation for legal purposes. It may adversely affect the therapeutic relationship and objectivity can be questioned. Conflicting obligations increase the risk of clinical, ethical, and even legal problems.
- 5.** Prior to performing a forensic examination, you should clarify your role with the evaluatee and document this. The person being examined must clearly understand that you are not his or her “doctor” and that you have been retained solely to evaluate and give an opinion. In nearly all cases you will not continue to follow the person evaluated, and that fact must be made clear to all parties. In rare cases you will be asked to perform a second or follow-up evaluation.
- 6.** The evaluatee should sign a release, prior to the examination, waiving confidentiality for specific purposes. The release should include permission to disseminate the report to the appropriate parties, to have your deposition taken and provide testimony at trial. The release should be prepared by an attorney familiar with the state and federal law pertaining to psychiatrist-patient privilege and confidentiality in the state where the evaluation is performed.
- 7.** While, there is no psychiatrist-patient relationship established between the forensic psychiatrist evaluator and the evaluatee, this does not mean that you cannot be sued or reported to the state medical board. If harm is alleged as a result of an examination, state law may allow you to be sued on the theory of ordinary

negligence or medical malpractice. To avoid the appearance that a psychiatrist-patient relationship has been established, do not accept an assignment directly from an evaluatee.

- 8.** Although a treatment relationship is not established during a forensic evaluation, the evaluator does owe a duty of care to the evaluatee. Most states have held that this duty includes a duty not to injure the evaluatee, a duty to perform an accurate evaluation, and a duty to make patient maintain confidentiality.
- 9.** While psychiatrists performing IMEs do have the potential for liability exposure there are two types of immunity that may apply: quasi-judicial immunity (protects the evaluator when performing judicial activities, e.g., evaluations and the making of recommendations related to a court's fact-finding and rendering of decisions) and witness immunity (protects the actual testimony given in a judicial proceeding but does not preclude complaints based upon the psychiatrist's actions in conducting the examination and preparing the report).
- 10.** Performing a forensic examination in a state where you are not licensed to practice may be a violation of the state's licensing laws. Confirm that you, as an out of state physician not licensed in the state where the evaluation is to take place, can legally perform a forensic examination.

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