

Licensure Requirements for Out-of-State Forensic Examinations

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Forensic clinicians, including psychiatrists, are sometimes asked to perform solely forensic (e.g., court- or litigation-related) assessments or interviews outside states in which they are licensed. A short survey was sent to all U.S. state medical licensing agencies asking whether or not a psychiatrist licensed in another state must also be licensed in the surveyed state before performing a purely forensic interview or examination. Of the 45 states responding, 21 said that no additional "local" license would be required; 6 gave unclear responses; and 18 said a local license would generally be required. At least 7 of the 18 states that generally require a local license accept unlicensed out-of-state physicians when they are requested by or consulting to an in-state physician. The state's definition of "medical practice" figured heavily in many responses. No pattern of state size (area), population density, or geographic location was discerned. The materials received, comments by board staff and attorneys, and interpretations or assumptions by the author are not to be construed as "official" for any state.

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Forensic clinicians, including psychiatrists, are often asked to perform solely forensic (e.g., court- or litigation-related) assessments or interviews outside the state in which they usually practice. Such situations might typically involve a lawyer's or court's request to evaluate civil plaintiffs, criminal defendants, or other current or potential subjects of litigation; an employer's request to assess employee impairment or dangerousness; or a licensing or certifying agency's request to assess the competence or impairment of a professional. While evaluation by a local physician may be appropriate and available in many cases, an attorney or court may, for any of a number of reasons, require or prefer someone from another state.

This article reports a survey of state medical licensing agencies ("boards"). Each board was asked whether an out-of-state psychiatrist, fully licensed in his or her "home" state, must also be licensed to practice medicine in the surveyed state before performing a purely forensic interview or examination

there. The survey did not directly address whether or not the state considers evaluative forensic work to be the "practice of medicine," nor did it ask whether or not a psychiatrist may perform non-interview forensic work (such as record review or attorney consultation) or provide expert testimony without a "local" license.

Method

During late 1999, a short survey was mailed to the medical licensing agencies ("boards") of the 50 states, the District of Columbia, and the five U.S. territories. A stamped, self-addressed return envelope was provided, as was a fax number and e-mail address for replies. Recipients were encouraged to contact the author (toll-free or by e-mail) if clarification was necessary, and were asked to provide their own contact number as well. We also asked for a copy of relevant parts of each state's licensing rule or statute.

The survey asked whether or not the respondent's state prohibits or restricts out-of-state forensic psychiatrist experts who perform assessments or other forensic interviews. The instructions made it clear that the answer would not be construed as a "guarantee," but as a "summary of the parameters within

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which out-of-state forensic consultants must work in your state," assuming all of the following:

(1) The consultant has an unrestricted license to practice medicine in at least one other state.

(2) The interview or assessment is solely for a legal or administrative purpose, and is not to guide clinical diagnosis or treatment. It will not directly result in any clinical action.

(3) The person interviewed is not, and will never be, the forensic consultant's "patient."

(4) The interview or assessment is not related to clinician or facility reimbursement, utilization review, procedure certification, "telemedicine," or Internet medical services.

(5) The interview or assessment is not at the request of a physician or health care entity (unless the physician is acting in a non-treatment capacity).

(6) The forensic psychiatrist is not an agent of, nor does he or she have any doctor-patient relationship with, the person being interviewed. He or she is the agent of a court, agency, or attorney who has retained the expert for some forensic purpose.

The response was to be couched in terms of one of the following:

___ In general, under the above circumstances, forensic psychiatrists who are licensed in some U.S. state may perform such interviews/assessments without restriction or a license in _____ (your state or territory).

___ In general, under the above circumstances, forensic psychiatrists who are licensed in some U.S. state do not require a full medical license in _____ (your state or territory) but *do* require _____ (please briefly describe requirements).

___ In general, under the above circumstances, forensic psychiatrists who are licensed in some U.S. state *may not* perform such interviews/assessments without a license to practice medicine in _____ (your state or territory).

After about 60 days, non-responding boards were recontacted by mail and, when possible, by telephone. Senior colleagues were contacted in those states which still did not respond, in an effort to place the questionnaire before an appropriate Board representative. The colleagues were cautioned not to complete the survey themselves.

The completed questionnaires and other response materials were collated, counted, and grouped by state size (area), population density, and location. No statistical tests were performed.

Results

Usable responses were received from 45 states. Most answered the survey question clearly and directly, with explanations when indicated. The respondents were all licensing board representatives, often attorneys. No response was received from Alaska, Arkansas, Nebraska, Washington, Wyoming, the District of Columbia, or any of the U.S. territories.

Twenty-one of the 45 states responding said that no "local" (i.e., surveyed state) license would be required of a psychiatrist who is fully licensed in another state. Eighteen said a license would generally be required, although at least seven of those replied that physicians requested by or consulting to a state-licensed physician need not have a local license. Five gave unclear responses. One of those implied that a local license was not required; another implied that it was (see Table 1).

A few small states, such as Maryland, extend reciprocity to physicians from neighboring states provided they consult only occasionally and do not maintain a local office. At least two states (Delaware, Montana) allow infrequent consultations even when the visiting psychiatrist is not from an adjoining state.

Three boards (North Carolina, Tennessee, Virginia) referred the author to their licensing statute for his own interpretation. Several states referred to their definitions of the practice of medicine; some included forensic evaluations, and others cited them as general or specific exceptions to licensure requirements. Some states specifically declined to call forensic evaluations and testimony the "practice of medicine" for licensure purposes.

Analysis of the responses by geographic location, state population density,⁴ and state size (area) suggested no patterns except for a trend among small eastern states to allow outside physicians or extend reciprocity to those from neighboring states. Massachusetts and Pennsylvania were exceptions to the trend.

Discussion

Licensure challenges to out-of-state forensic experts would thus far appear uncommon. One colleague who often travels to distant states, when hearing of the survey, suggested we "let sleeping dogs lie." Physicians cannot ignore practice-related laws and

Table 1 Licensure Requirements for Out-of-State Forensic Psychiatric Examinations*

State	Does Response Suggest O.K. to Examine Without Local License?				Comment
	Yes	Unclear	With local doctor	No	
AL	X				
AZ			X		Only in consultation with a locally licensed physician
CA				X	
CO	X				
CT	X				
DE	X				Up to six times per year
FL	X				
GA		X			O.K. at request of a locally licensed physician; others on a case-by-case basis
HI				X	
IA			X		Only in consultation with a locally licensed physician
ID			X		Only in consultation with a locally licensed physician
IL				X	
IN		X			Agency cannot advise; seek attorney's advice
KS	X				Forensic work not defined as "a healing art"
KY	X				May require consultation with a locally licensed physician
LA				X	With prior "visitor's permit" and in consult with a locally licensed physician
MA				X	
MD				X	O.K. if licensed in an adjoining state
ME	X				
MI	X				
MN	X				
MO	X				
MS	X				
MT	X				If only "occasional"
NC			X		Only in consultation with a locally licensed physician
ND	X				
NH	X				Forensic work is not the "practice of medicine"
NJ	X				But suggest consulting a lawyer
NM	X				
NV				X	
NY		X			Response suggests license is required
OH	X				
OK			X		Only in "actual" consultation with a locally licensed physician
OR		X			Two respondents: one said no license required
PA				X	
RI	X				
SC	X				
SD				X	
TN		X			Referred to statute; unclear
TX				X	
UT				X	
VA			X		Probably not, unless in consultation with a locally licensed physician
VT	X				
WI				X	
WV		X			"... 'should not'... for (the doctor's) protection."

*N = 45 states responding (no response received from the remaining five states, District of Columbia, or U.S. territories).

rules, however. The American Medical Association (AMA) discusses expert witness activities as a medical subspecialty, comparing them to clinical evaluation,

diagnosis, treatment, and/or other involvement in clinical questions related to the standard of medical/psychological care.^{1, 2} A recent AMA Board of Trust-

ees report² notes that viewing forensic expert roles as medical practice suggests an opportunity for peer review, and provides definitions of the "practice of medicine" in each state.

State Interests

If a state requires a local license of any physician who performs a forensic evaluation (one with no physician-patient relationship nor any direct bearing on future treatment), its courts' access to medical expertise is restricted to a greater or lesser degree. Such a requirement would seem particularly limiting to lawyers and courts in small or rural states. Any state interest in requiring an additional, local license would seem to be outweighed by several factors:

- Many forensic medical matters are highly specialized and require a broad pool of potential experts to retain an experienced person. Incarcerated criminal defendants and hospitalized plaintiffs, especially, are rarely able to travel for an evaluation.

- Regardless of the availability of local specialists, litigants may be entitled to search beyond state boundaries to find the expertise they believe is best suited to their cases.

- In some cases (e.g., malpractice or physician impairment actions), it is often difficult for litigants to find local experts willing to testify objectively on their behalf.

Forensic Evaluation Versus Patient Care

It is important that one understand the difference between a clinician's "patient" and a forensic "eval-uee" when referring to forensic psychiatry and the "practice of medicine." Forensic psychiatrists are accustomed to separating examinations done for a legal or administrative purpose from those in which a doctor-patient relationship is formed, with its attendant duties to the "patient." In the forensic work contemplated in this survey, the physician is an agent of a lawyer, court, or some other third party (such as an employer), and does not owe a clinical duty to the patient. The duty (of performing within the professional standard required of the particular situation) is owed to the entity which retains the psychiatrist, and often to a court which relies on his or her objectivity, honesty, and expertise.

It is also important to note that this survey does not address forensic activities that do not involve a face-to-face interview or examination. Forensic clinicians routinely see people who travel from other

states to their offices, review records, meet with lawyers in other states, submit out-of-state reports, and testify in other states' courts. It is quite uncommon for court requirements for expert qualification (as contrasted with state licensing agency practice requirements) to include local licensure.

"Practicing Without a License"

Simon and Shuman³ remind forensic psychiatrists of the possible consequences of being accused of practicing without a license. They note that one's malpractice policy may balk at covering acts performed when his or her license is in question. They also cite an unreported case of a social worker accused of practicing without a local license by examining a litigant; the matter was resolved when the judge "ordered" the evaluation after the fact.

Court Versus State Requirements

This raises the question of whether or not a court may, in effect, waive or disregard a state licensing requirement by ordering that an out-of-state expert examine someone. If so, which courts, in which states, might have such authority? Federal jurisdictions come to mind, but they often defer to state procedures. Virginia, for example, appears to require a local license, but a 1995 appeals court decision in *Fowler v. City of Manassas Department of Social Services*⁵ found no reason that an "otherwise qualified professional" (in this case a psychologist) could not perform evaluations and be called as an expert witness without a Virginia license. Other states may have case law that addresses the forensic examination issue, but extensive case research is beyond the purview of this article.

What Should the Clinician Do to Protect Himself/Herself and Stay Within the Law?

Contacting the state licensing agency is probably not the best, nor most reliable, course. The survey process made it clear that it would be at least unwieldy, and often impossible, for a clinician contemplating a forensic interview or examination to get prompt, reliable information directly from a state licensing agency. Even if the physician were able to wait for an answer, many agencies or boards will not provide a binding or "legal" opinion until a formal complaint is made and investigated. Nevertheless, several licensing boards made it clear that the professional who performs the service bears the onus of

being certain it is legal. Some suggested that a psychiatrist contemplating interviewing or examining an evaluatee in their state clarify his or her position with an attorney beforehand. Whether one seeks formal legal advice or not, it seems prudent for such a psychiatrist to discuss the issue with the retaining attorney, make it clear that he or she does not intend to practice outside the law, and document reasonable efforts to resolve any significant uncertainty about the contemplated activity.

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Addendum: Call for Reader Feedback

Readers who have had some experience related to the topic of this article, or who have some knowledge they would like to share

with the author, are encouraged to contact Dr. Reid by e-mail at reidpsychiatry@compuserve.com or write to him at P.O. Box 4015, Horseshoe Bay, TX 78657 (fax 830-596-9047). Please include as much information as feasible, including the professional discipline in which you are licensed. The information received may be used in a future communication, but identifying data will be kept confidential.

References

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5. *Fowler v. City of Manassas Dep't of Soc. Serv.*, No. 0878-94-4, 1995 WL 16575 (Va. Ct. App. Jan. 17, 1995)