

Quality in Forensic Psychological Assessment: Standards of Practice and Care

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Forensic psychologists may be court-appointed or retained as an expert consultant/witness to perform forensic psychological assessments, where an assessment may be provided by the opposing expert.

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Alternatively, forensic psychologists may be called upon to review or critique forensic psychological assessments in legal cases.

The conduct of forensic psychological assessment is embedded in a thick context of standards, regulations and practice guidelines.

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These standards, regulations, and guidelines are designed to protect the public and insure high quality forensic work.

Adherence to standards of practice and care also serve to reduce risk of various types of liability, including denial of admissibility of forensic work product, impeachment during testimony, malpractice or license complaints, and damage to professional credibility.

Regulatory standards, Practice Guidelines, & Standards of Care

In conducting a forensic psychological evaluation or peer review, these guidelines provide standards for evaluating quality, procedural adherence, admissibility, and scientific credibility.

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This presentation provides a framework for the organization and conduct of these reviews.

APA Guidelines for Practitioners

Specialty Guidelines for Forensic Psychology--The goals of these guidelines are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those they serve. These guidelines are intended for use by psychologists when engaged in the practice of forensic psychology and may also provide guidance on professional conduct to the legal system, and other organizations and professions.

APA Guidelines for Practitioners

Guidelines for Child Custody Evaluations In Family Law Proceedings--These guidelines address what are commonly termed "child custody" evaluations, involving disputes over decision-making, caretaking and access in the wake of marital or other relationship dissolution.

APA Guidelines for Practitioners

Guidelines for Test User Qualifications--Previous efforts to specify test user qualifications, although useful, did not provide the kind of specific guidance that many APA members and others were seeking. As a result, these guidelines describe two types of test user qualifications: (a) generic psychometric knowledge and skills that serve as a basis for most of the typical uses of tests and (b) specific qualifications for the responsible use of tests in particular settings or for specific purposes (e.g., health care settings or forensic or educational decision making). The guidelines apply most directly to standardized tests, such as tests of ability, aptitude, achievement, attitudes, interests, personality, cognitive functioning, and mental health.

APA Guidelines for Practitioners

Guidelines for Psychological Evaluations in Child Protection

Matters -- As the complexity of psychological practice increases and the reciprocal involvement between psychologists and the public broadens, the need for guidelines to educate the profession, the public, and the other interested parties regarding desirable professional practice in child protection matters continues to increase. Because psychologists may assume various roles and responsibilities in child protection matters, these guidelines were developed primarily for psychologists conducting psychological evaluations in such matters.

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Heilbrun, K., DeMatteo, Marcyzk, G., & Goldstein, A, (2009). Standards of practice and care in forensic mental health assessment: Legal, professional, and principles-based considerations. *Psychology, Public Policy, and the Law*, 14, 1, 1-26.

Report Quality Standards

Grisso, T. (2010). Guidance for Improving Forensic Reports: A Review of Common Errors. *Open Access Journal of Forensic Psychology*.

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2010.2: 102-115.

Wettstein, R. (2005). Quality and quality improvement in forensic mental health evaluations. *Journal of the American Academy of Psychiatry and Law*, 33, 158-175.

Report Quality Standards

Robinson, R., & Acklin, M.W. (2010). Fitness if paradise: Quality of forensic reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*, 33, 131-137.

Fuger, K., Acklin, M.W., Gowensmith, W., & Ignacio, L. (in press). Insanity in paradise: Quality of criminal responsibility reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*.

Report Quality Standards

Nguyen, A., Acklin, M.W., Fuger, K., Gowensmith, W., & Ignacio, L. (2011). Freedom in Paradise: Quality of conditional release reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*, 34, 341-348.

Report Quality Standards

Quality of the work product

Does the work product demonstrate characteristics which have been identified in the professional report quality literature?

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Regulatory standards for informed consent and release of clinical and forensic work product – HIPAA, state laws, attorney—client work product

Does the work product conform to standards for informed consent and release of information?

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Ken Pope's interpretation of HIPAA

<http://kspope.com/ethics/hipaa.php#copy>

Regulatory standards, Practice Guidelines, & Standards of Care

Practice Guidelines

- APA Ethical Principles and Code of Conduct
- Specialty Guidelines for Forensic Psychologists
- AFCC Standards for Child Custody Evaluations
- Practice guidelines are defined as aspirational, i.e., specific recommendations for professional behavior to insure high quality services.

Does the work product comport with best practices guidelines?

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Standard of Care

Any professional practitioner must conform to a standard of care, skill, or technical proficiency normally exercised by others practicing in the same field.

Does the work product demonstrate conformance to the standard of care?

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Qualifications of expert -- FRE 702

In 2000, Rule 702 was amended in an attempt to codify and structure elements embodied in the "*Daubert* trilogy." The rule now reads as follows:

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Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (As amended Apr. 17, 2000, eff. Dec. 1, 2000.)

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Vanity Diplomates--The Voir Dire of Forensic Experts: Issues of qualification and training--

[Subtitle: "Sheepskins for sale: Shortcut to Slaughter?"] Golding, 1999

*Is the expert qualified to provide testimony?
Does the expert have board certification in a
recognized specialty? Will the expert survive
voir dire? Does the expert have a vanity
diplomat?*

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Standards of admissibility

- Frye test – general acceptance test
- Daubert test of admissibility–

Judge is gatekeeper: Under Rule 702, the task of "gatekeeping", or assuring that scientific expert testimony truly proceeds from "scientific knowledge", rests on the trial judge.

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Relevance and reliability: This requires the trial judge to ensure that the expert's testimony is "relevant to the task at hand" and that it rests "on a reliable foundation". *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587. Concerns about expert testimony cannot be simply referred to the jury as a question of weight.

Scientific knowledge - scientific method/methodology: A conclusion will qualify as *scientific knowledge* if the proponent can demonstrate that it is the product of sound "scientific methodology" derived from the scientific method.

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Factors relevant: The Court defined "scientific methodology" as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a nondispositive, nonexclusive, "flexible" test for establishing its "validity":

Regulatory standards, Practice Guidelines, & Standards of Care

- Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
- Subjected to peer review and publication.
- Known or potential error rate.
- The existence and maintenance of standards and controls concerning its operation.
- Degree to which the theory and technique is generally accepted by a relevant scientific community.

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*Does the forensic work product rely on
methods and reach conclusions that meet
various admissibility tests?*

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Assessment instrumentation -- Standards for Educational and Psychological Testing (APA, in revision)

Were the instruments and procedures properly chosen and applied? This includes clinical, forensically relevant, or forensic assessments.

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Knowledge and Application Use of the professional behavioral science literature – competent practice inevitably requires on-going acquaintance with the developing literature.

Does the work product demonstrate knowledge of the current status of the professional literature on the issue in question?

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Partisan/Adversarial Allegiance

Recent articles have assessed the issue of inter-rater agreement on the PCL-R by opposing experts in an adversarial proceeding.

Does the work product demonstrate objectivity, i.e., lack of bias, in the utilization of methods and findings?

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References

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International Journal of Law and Psychiatry, 34,
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American Psychological Association, Standards for Educational and Psychological Testing (currently in revision).

Federal Rules of Evidence, 702-704

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Murrie, D. (2008). Do some evaluators report consistently higher or lower psychopathy scores than others? Findings from a statewide sample of sexually violent predator evaluations." *Psychology, Public Policy & Law*, 14, 262-283.

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