INDEPENDENT EVALUATIONS IN CHILD CUSTODY DISPUTES

Although performing independent evaluations is typically a low-risk area for the child and adolescent psychiatrist, we do occasionally see claims resulting from such work. These cases typically involve common missteps. Accordingly, if you are contemplating entering this area of practice you may want to consider the following observations and suggestions.

1. Treating clinicians are often asked to assume, or are pressured into assuming, the additional role of performing independent evaluations for child custody disputes. If both treatment and evaluation roles are assumed, the clinician will almost certainly be faced with conflicting demands that ultimately impact negatively upon the treatment relationship.

2. Once you determine that there are no conflicts, and agree to perform a custody evaluation, it is important for the side that is retaining you to clearly define your role as evaluator and the type of evaluation being requested. Do not accept an assignment where the retaining party attempts to influence the integrity of the evaluation. For example, if you will be acting on behalf of one party to a custody dispute, you should not profess, at the retaining party's urging, to be impartial or to be in a position to give an unbiased opinion about the overall custody determination or evaluation.

3. It may be a violation of a state's licensing laws to perform an examination in a state where one is not licensed to practice. If approached to do such an evaluation, confirm with that state's physicians' licensing body that there are not statutory or regulatory proscriptions.

4. The retaining party should supply the information and materials needed to conduct a careful and reasoned assessment. At a minimum, this may consist of prior medical/mental health treatment records (including any hospital admissions), school reports, and psychological raw data, as well as pertinent legal documents. If the retaining party withholds relevant information, consider refusing the assignment. Limited access to information has the potential to adversely affect the quality of the evaluation.

5. Before performing an evaluation and rendering an opinion, ascertain who has the legal authority to consent to the evaluation of the child. The legally authorized party should give written consent for the specific purpose of the evaluation. The legally authorized party should also sign an authorization form prior to the examination that includes permission to disseminate the report to the appropriate parties and to permit your testimony at deposition and/or trial, if required. Note that HIPAA's Privacy Rule allows providers performing independent evaluations to condition services (i.e., the evaluation) upon receipt of an authorization for the release of protected health information.

6. Clarify who will own or have access to any reports, notes, or records of the evaluation once the assignment is complete. Discuss this with the evaluee (or the legally authorized representative) and document that conversation.

7. Clarify the nature of the relationship with the evaluee (or the legally authorized representative), provide information about the purpose and limits of the evaluation, and document that discussion. You must make it clear that you are not an evaluee's "treatment provider" but have been retained solely to evaluate and give an opinion.

8. If the evaluation is court ordered and the evaluee (or legally authorized representative) refuses to participate or cooperate adequately, the report should be prepared advising of the failure to participate. It may not be possible to provide a complete opinion in this instance. In such cases, it may be appropriate to report that limited conclusions or no conclusions were reached due to the failure to cooperate.

9. The written report is a pivotal piece of information in an independent evaluation. When preparing a report include at least the following:

- Who requested the examination/evaluation
- Reasons for the consultation
- Issues you were asked to address or questions you were asked to answer
- List all material that has been reviewed as part of the evaluation and opinion, including the evaluees' records, school reports, legal documents, etc.
- Document all elements of the evaluation(s) that are relevant to the issues
- Document who was evaluated, interviewed, contacted, telephoned, etc., for the report; include dates when seen/interviewed and the time spent in the session
- Identify the clinicians/treating facility responsible for follow-up and treatment (if any)
- Prepare a clear, succinct conclusion

10. The data in the report should be comprehensive enough to support the conclusions and recommendations.

11. Remember that testimony in a deposition or in court may take place months after an evaluation. Thus, the final report should be comprehensive enough that relevant information can be conveyed even months after the evaluation is completed.

12. If a deposition is requested, be well-prepared for it. The attorneys will question the report and its conclusions, sometimes quite vigorously. If you are a frequent expert witness in similar cases, the attorneys involved will often have transcripts from testimony in prior cases, and prior testimony can be used to attack your credibility. Consider similar cases and whether testimony in the current case is consistent with testimony in prior cases. If not, be very clear on the distinctions.

13. Expert testimony may be subject to peer review. Accordingly, know and follow the applicable standards governing forensic practice, such as documenting examinations, identifying personal opinions as such, identifying material relied on in reaching conclusions pursuant to the evaluation, etc. Some states have statutory requirements about the necessary qualifications for professionals who give forensic testimony.

14. A mental health provider agreeing to perform an independent evaluation should have the appropriate knowledge, training, and skills before conducting a forensic evaluation. Several professional organizations have published guidelines about conducting child custody evaluations.

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