



ETHICAL GUIDELINES FOR CANADIAN FORENSIC PSYCHIATRISTS

Approved by the Canadian Academy of Psychiatry and the Law (CAPL) Board of Directors on January 17, 2018 and ratified by Academy members on February 20, 2018.

PREAMBLE:

Forensic psychiatry is a psychiatric subspecialty in which scientific and clinical expertise are applied to legal issues in legal contexts embracing civil, criminal, correctional or legislative matters. Forensic psychiatrists have specialized expertise in the assessment and treatment of special populations, including young offenders, sexual offenders and violent offenders.

The Canadian Academy of Psychiatry and the Law (CAPL) is dedicated to achieving the highest standard of practice in forensic psychiatry. Recognizing the unique aspects of forensic psychiatric practice, which is at the interface of the professions of psychiatry and the law and includes correctional and forensic rehabilitation psychiatry, the Academy presents these guidelines for ethical practice.

The Canadian Medical Association (CMA) Code of Ethics (2004) applies to all physicians practising medicine in Canada and thus guides the treatment aspects of forensic psychiatric practice. While following the CMA framework, these guidelines explain the sometimes limited therapeutic role in forensic psychiatry and expand on the specific ethical principles that apply to forensic practice.

In this version of the guidelines, CAPL has referenced many principles of the American Academy of Psychiatry and the Law Ethics Guidelines for the Practice of Forensic Psychiatry (2005). Modifications include those that are compatible with Canadian practice.

The forensic psychiatrist, like all physicians, is called upon to practise in a manner that balances competing duties to the individual and to society. A particularly complex example of this is the correctional setting, where physicians may face requests to prioritize institutional interests ahead of ethical practice. Nonetheless, forensic psychiatry should be, and is, appropriately bound by the underlying ethical principles of beneficence, respect for persons, honesty, justice and social responsibility.

These CAPL Ethical Guidelines serve as a guideline, and not as a directive for individual practice, when facing ethical dilemmas in forensic psychiatric practice.

1. Consider first the well-being of the patient.

While forensic psychiatrists in many situations will be aware of and consider the well-being of patients and evaluatees, the forensic psychiatric evaluation often requires that other ethical duties are given equal weight. This includes respect for the administration of justice, the duty to protect others, social responsibility, and striving for objectivity and honesty.

In the forensic psychiatric evaluation, forensic psychiatrists have a duty to give opinions that are fair, objective and non-partisan, even if their opinion may appear to be harmful to the evaluatee. As part of the process of obtaining informed consent to continue with the assessment, the evaluatee should be made aware of this at the beginning of the evaluation.

In clinical work, similar balancing of conflicting principles may be at play, though higher priority should be placed on patient well-being. The forensic psychiatrist distinguishes between the clinical therapeutic role and the forensic evaluation role.

Forensic psychiatrists refuse to participate in or support practices that violate human rights. Forensic psychiatrists never are involved in torture or in practices that promote torture.

The forensic psychiatrist works to provide quality care that is safe and as evidence-based as possible in order to prevent harm to the patient. Should harm occur, the forensic psychiatrist assists in disclosing the facts to the patient, and as appropriate or applicable, to the family.

2. Practise the profession of medicine in a manner that treats the patient or evaluatee with dignity and as a person who is worthy of respect.

At all times the forensic psychiatrist acts respectfully and maintains the dignity of the evaluatee.

3. Practise the art and science of medicine competently, with integrity and without impairment.

The forensic psychiatrist has a duty to give opinions that are fair, objective and non-partisan. The forensic psychiatrist must strive for impartiality, independent of whom retained them.

Due to the adversarial nature of many legal processes, being retained by one party in a legal matter exposes forensic psychiatrists to the potential for unintended bias and the danger of distortion of their opinion in the service of the retaining party. It is the responsibility of psychiatrists, through ongoing reflection, to minimize potential bias by acting in an honest manner and striving to provide an opinion that is as objective as possible.

Psychiatrists who take on a forensic assessment role for patients with whom they have a therapeutic relationship face competing ethical principles that must be acknowledged and managed. Treating psychiatrists who have conducted a risk assessment on their patient and provide forensic opinion regarding the results in court, or at a Review Board or other tribunal, may provide opinions that may reflect negatively on their patient, thereby potentially damaging the therapeutic relationship. The adversarial nature of legal proceedings where the psychiatrist acts in this dual role must be accepted and managed in a professional manner. Further, the potential for bias in the psychiatrist's opinion stemming from the nature of the therapeutic relationship must be accepted and acknowledged.

In some situations it is appropriate or necessary to act in this dual role. The proscription of acting in a dual role is not absolute and ethical principles require that this dual role be communicated to the evaluatee (patient) and to all parties involved. In addition, the limitations to confidentiality and any other limitations related to the dual role must be communicated in written reports and/or viva voce evidence.

As such, treating psychiatrists are especially cautious when acting as an expert witness for their patients. When acting in this dual role, the dual role should be highlighted including educating the trier of fact about the potential for bias in their opinions so that appropriate weight can be given to the opinion. Forensic psychiatrists recuse themselves if they are not prepared to give fair, objective and non-partisan opinion evidence.

Honesty, objectivity and the adequacy of the clinical evaluation may be called into question when an expert opinion is offered without a personal examination of the evaluatee. In certain evaluations (such as record reviews for negligence cases) a personal examination is not

required. In other forensic evaluations, if, after appropriate effort, it is not feasible to conduct a personal examination, an opinion may be nonetheless rendered on the basis of available information. Under these circumstances, it is the responsibility of the psychiatrist to make all effort to ensure that statements, opinions, and any reports or testimony based on those opinions assert clearly that there was no personal examination and note any resulting limitations to the opinion.

Contingency fees undermine honesty and efforts to attain objectivity and should never be accepted. Retainer fees do not create the same problems in regard to honesty and objectivity, may enhance these goals, and thus, may be accepted.

Forensic psychiatrists refrain from making public statements regarding direct diagnosis or definitive conclusions regarding public figures without the benefit of formal, direct assessment.

4. Engage in lifelong learning to maintain and improve professional knowledge, skills and attitudes.

Forensic psychiatrists engage in lifelong learning and skills development. The science of forensic psychiatry and the findings of jurisprudence are constantly evolving. Forensic psychiatrists are expected to perform at the highest level of competence of which they are capable, hence they are required continuously to hone their skills and enhance their knowledge.

5. Promote and maintain personal health and well-being.

Forensic psychiatrists often are exposed to traumatizing information in criminal cases and/or in providing care to forensic patients. Other stressors such as being the victim of assault by a patient or evaluatee also can occur, and forensic psychiatrists take care to use available resources and supports to minimize the impact of these on their health and ultimately on their practice.

6. Recognize your limitations and, when indicated, recommend or seek additional opinions and services.

Forensic psychiatrists may be called or be tempted to give evidence on areas that fall outside their usual practice and areas of expertise. Similarly, previously acquired skill and expertise may have been diminished if not practised regularly within the area. Forensic psychiatrists are honest regarding their qualifications and limitations, suggesting alternate experts as appropriate.

7. Provide whatever appropriate assistance is necessary to any person with an urgent need for medical care.

Forensic psychiatrists make all reasonable efforts to ensure that evaluatees or any other person for whom they are in a position to provide urgent assistance receive the necessary care by calling for urgent medical assistance, arranging for urgent referral and/or transport to an appropriate facility.

Where the forensic psychiatrist becomes aware that the evaluatee poses an acute risk of violence to self or others including vulnerable children, the forensic psychiatrist informs the appropriate authorities and/or completes relevant mental health act forms.

8. When acting on behalf of a third party, take reasonable steps to ensure that the evaluatee understands the nature and extent of your responsibility to the third party.

It is important to inform the evaluatee at the outset of all forensic psychiatric evaluations of the nature and purpose of the evaluation and the limits of the confidentiality regarding the information. It is important to gain the full and informed consent of the evaluatee when necessary and feasible. If the evaluatee is not capable of consenting, the evaluator should document and include in the report, the details and findings of this assessment.

Full valid informed consent is an important ethical principle. It is therefore incumbent upon the psychiatrist to take time to ensure that the evaluatee understands the nature and purpose of the evaluation, and the various limitations to confidentiality. For example, it may be important to inform the evaluatee of the protected nature of evaluations under s. 672.11 of the [Criminal Code of Canada](#), but that any information gained in the evaluation may be provided to the court, and that the psychiatrist may have to give evidence in court regarding the evaluatee, including being cross-examined. It is also important to inform the evaluatee that even in examinations that may be covered by the umbrella of solicitor-client privilege, certain exceptions may apply in which the psychiatrist is mandated to breach confidentiality. Certain examples, such as when there is an imminent threat of serious bodily harm to a third person, or where a child is at risk, should explicitly be stated.

In some evaluations, such as court-ordered evaluations of fitness to stand trial or an evaluation regarding certifying a person under a mental health act, neither assent nor informed consent may be required.

Forensic psychiatrists only perform evaluations for the Crown or for the government after the evaluatee has had reasonable time to consult legal counsel. Generally it is ethical to perform certain evaluations related to capacity to provide informed consent, civil commitment, or risk assessment related to management or discharge planning on an evaluatee who has elected voluntarily not to consult legal counsel.

If the forensic psychiatrist is working as a treating psychiatrist in correctional institutions, they have an ethical obligation to inform the patient of the limits to confidentiality of the institution in which they reside or are detained.

9. Research.

Forensic psychiatrists involved in forensic research ensure they adhere to the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*. This includes

obtaining valid consent where appropriate, lack of coercion and avoidance of harm. Research protocols should have approval of the relevant organizational and/or academic research ethics board.

Persons with mental health problems and those involved in the legal/correctional system may be particularly vulnerable. However, such individuals should not be deprived of the opportunity to participate in, and benefit from, research.

Forensic psychiatrists are not involved in deceitful practices designed to harm the patient or evaluatee. One exception to the rule regarding deceit is interventions that form part of ethically approved research studies in which appropriate debriefing is part of the procedure.

10. Recognize a responsibility to give generally held opinions of the profession when interpreting scientific knowledge, and when presenting an opinion that is contrary to the generally held opinion of the profession, so indicate.

If the forensic psychiatrist gives information to a third party regarding opinions about a novel or controversial diagnosis, syndrome, or treatment, it is incumbent upon the psychiatrist to state explicitly whether this diagnosis or syndrome or treatment is generally recognized by the profession.

11. Avoid impugning the reputation of colleagues for personal motives; however, report to the appropriate authority any unethical, illegal or unprofessional conduct by colleagues.

It is not uncommon for a forensic psychiatrist to be asked to comment upon the work product or the reputation of a colleague. When doing this the psychiatrist is expected to be guided by the rules of civil conduct and to treat colleagues with dignity and as persons worthy of respect. In some circumstances the psychiatrist may disagree with the opinion of a colleague, but it is unethical to make a personal attack on the reputation or characteristics of a colleague.

REFERENCES

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