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**ON THE WEB**[www.state.oh.us/psy](http://www.state.oh.us/psy)

The State Board of Psychology is pleased to provide ALERT! 2003 to all licensees. This inaugural issue of ALERT! includes a reminder about renewal and Mandatory Continuing Education (MCE) and information about standards of care when interacting with attorneys, courts, and clients when domestic relations issues are present. We invite you to review various alerts and significant updated information at the Board's website at [www.state.oh.us/psy](http://www.state.oh.us/psy), where answers to many questions can be found.

**FEATURED CRITICAL INFORMATION****WHEN CLIENTS ARE IN DOMESTIC RELATIONS LITIGATION  
PSYCHOLOGISTS MUST PROCEED WITH CAUTION**

The Board regularly receives complaints from clients alleging violations of law and rules relative to psychologists' work in domestic relations matters. This article serves to amplify the prevailing standards of care in forensic psychology in order to help Ohio psychologists comply with standards and administrative rules. Before proceeding, all licensees should know that terms previously used have changed. "Visitation" is outdated and has been replaced by "parenting time." Also, "custody" is correctly referred to as "allocation of parental rights and responsibilities."

**Recent Board actions.** Since December 2002, the Board has issued five disciplinary actions and three Notices of Opportunity for Hearing for violations of the Rules of Professional Conduct, relative to psychological practice in the domestic relations area. Each disciplinary action involved violations due to a lack of a fundamental or reasonable level of knowledge and understanding of the legal and professional standards of care that govern the participation of psychological experts in legal proceedings. Most problems encountered by these licensees involved establishing a therapeutic relationship with a child and/or parent and subsequently writing letters or giving testimony expressing opinions about parenting time or allocation of parental rights and responsibilities. *Psychologists in a therapeutic role should not give any opinions to the legal system about parental access to children, as this is a separate and distinct process reserved for an objective expert, typically ordered by a court to evaluate the entire family—and not just "one side."* Psychotherapists are biased inherently in favor of the client and cannot serve courts with the objectivity necessary to assist in litigation. Some of the five recent actions, and several complaints under investigation, include psychologists rendering opinions about a parent or child who was never even met by the psychologist. Complaints from clients generally fall in one of two categories:

- 1) The licensee, as therapist for a child and/or parent(s), gives opinions/recommendations to an agent of a court (e.g., judge, magistrate, attorney, guardian ad litem, or even another psychologist involved in litigation) about parenting time or allocation of parental rights and responsibilities.
- 2) The licensee, in an expert forensic evaluator role, gives to the Court an expert opinion about parenting time or allocation of parental rights and responsibilities without following prevailing professional standards.

**Know your role.** Therapy clients who are also in litigation present a unique set of circumstances for treating psychologists. Issues from a client's involvement in litigation are bound

See **CAUTION-** page 2

to enter the treatment office. This might be as obvious as a request for a letter to the client's attorney saying that the client is not at risk to her children. This might be as subtle as a client complaining about alleged behavior by the client's spouse and hooking you into secretly wanting to tell the judge. Prevailing standards essentially demand that you define and remain within one role with a given client. If you are the therapist for an individual, couple, or family, then you should avoid giving opinions to a court relative to that client. Once a therapeutic role has been established, you are at risk of violating several laws and rules if you render professional opinions about parenting time or allocation of parental rights and responsibilities to an agent of a court.

Clients who are also litigants (for example, in contested parenting disputes) frequently seek advocacy and supportive opinions from their therapists to bolster chances in litigation. This raises issues of boundaries and competence. It is tempting and all too common for attorneys and courts to ask therapists to provide recommendations and opinions about a therapy client. It might appear that the treating psychologist, as a professional who best "knows" the litigant, can be the most efficient person to advise the Court about a legal matter. This is also seductive for some therapists, who "know" the client. The primary problem with this temptation is related to and inherent dual roles and bias. "Knowing" your client does not mean that you have the proper knowledge base necessary to inform the legal system. Quite the opposite. The legal system needs reasonably objective data to assist the Court in reaching legal decisions. Many reasons why psychotherapy can be so helpful are the same reasons that the psychotherapist cannot meet the standards for rendering opinions to the legal system. It's about conscious and unconscious risks of taking sides, bias, and a loss of objectivity. Psychologists who attempt this dual role (psychotherapist to the client and expert for the legal system) are in an inherent role conflict that can violate administrative rules on negligence, competence, welfare of the client, and impaired objectivity and dual relationships. Do not let emo-

tions or "client advocacy" determine your behavior and lead to switching roles.

**Know the standards.** Many psychologists practice forensic psychology without knowing it, while some psychologists who identify themselves as forensic psychologists are not familiar with prevailing standards. These are both ripe with possibilities for complaints and violations. Psychologists who interface with the legal system at any entry point should know about prevailing standards in forensic psychology. In today's practice, this seems to include virtually all psychologists. *The Specialty Guidelines for*

*Forensic Psychologists*, published by the American Psychology-Law Society (1991) still includes contemporary standards for psychologists who work with psycholegal issues (basically every one of us). All psychologists should know basic standards outlined in the *Specialty Guidelines* and the *Guidelines for Child Custody Evaluations in Divorce Proceedings*, published by APA. Issues of professional journals published by OPA and APA have included information on these issues. Seek continuing education in forensic psychology. Join professional associations and divisions that specialize in psycho-legal issues and forensic practice. Develop consultative relationships with colleagues who are familiar with these standards.

**Know about types of testimony.** Psychologists can serve the legal system as either a fact witness or as an expert witness [which can further be broken down into a "forensic expert" and "treating expert."] A fact witness can usually only testify about things learned or observed directly in therapy. A psychologist giving fact testimony can assist the Court about facts and observations learned first hand, and maybe clinical opinions (diagnosis, prognosis, techniques used, response—things related to di-

rect clinical contact but not to broader legal questions like parental access to children).

Psychologists can also serve the legal system as experts, who can offer opinions, the content of which would depend on the "type" of expert. In order to be admitted in Court, an expert opinion is supposed to be reliable and valid to a reasonable degree of scientific certainty. Unfortunately,

**"Psychologists who interface with the legal system at any entry point should know about prevailing standards in forensic psychology. In today's practice, this seems to include virtually all psychologists."**

many judges and magistrates admit testimony that does not meet this standard. It is still the psychologist's responsibility to conduct one's practice according to prevailing standards. If you do not enter the legal system with an overt role as being

an expert to assist the Court in reaching a decision (e.g., a court-appointed custody evaluator), then stick to the facts and advise all parties that your role as therapist does not allow for the expression of expert opinions regarding questions before the Court.

It would generally be OK for a psychotherapist to advise the Court in some way similar to: "My client told me that he is highly invested in his children and that he wants more visitation time, but I am not in the role of forming an expert opinion to advise the court about legal issues about parental rights to time with the children. I am in the role of his therapist and therapists are typically too biased to advise the court about such issues."

On the other hand, a therapist might be able to testify as a treating expert and offer opinions to the court—but only opinions related to diagnosis and prognosis of the client. A treating expert usually has some expertise and experience with a certain disorder that would make their opinions valuable to the Court, but should not render opinions about parental capacity or the best interests of a child. **Ψ**

## LICENSE RENEWAL IS APPROACHING

Renewal materials will be mailed to your last known address in late June 2004. Make sure to complete all of your **23 MCE HOURS**, including **3 hours** in approved coursework in the area of professional conduct and ethics, by August 31, 2004, OR YOUR LICENSE WILL BE SUSPENDED until which time, after September 30, 2004, your MCE hours are processed by OPA or OSPA, reported to the Board, and your application is complete. This is law, not policy. The organizations that are authorized to approve MCE courses as meeting Ohio's requirements for "professional conduct and ethics" are the Ohio Psychological Association (OPA), the Ohio School Psychology Association (OSPA), and the Association of Black Psychologists (ABPsi).

### READY FOR RENEWAL? THINGS YOU SHOULD HAVE DONE ALREADY OR SHOULD DO NOW

**IF YOU HAVE MOVED, DO NOT KEEP IT A SECRET.** If you have moved or changed jobs since last renewal, we need to know! Change of address must be submitted in writing to the Board office within 90 days of change, by e-mail ([psy.ce@exchange.state.oh.us](mailto:psy.ce@exchange.state.oh.us)), fax (614/728-7081) or mail. Please check the license verification link on the Board's website to see if we have your correct address. If we do not have your address, your renewal materials will lay around the post office or the Board office looking for a home.

**REGISTER WITH OPA OR OSPA.** The Board is required by law to only accept MCE hours certified by one of these organizations, which approve, track, and report MCE hours to the Board. You must be registered with either OPA or OSPA to have your credits certified and reported to the Board. Never send your CE certificates to the Board office. Verify with your professional organization that you are registered and that your MCE credits have been received.

OPA: [mce@ohpsych.org](mailto:mce@ohpsych.org)  
614/224-9620; 888/672-6231  
OSPA: [ospa1997@aol.com](mailto:ospa1997@aol.com)  
614/939-5980.

**COMPLETE YOUR MCE, ASAP.** Renewal applications cannot be processed until all MCE has been completed and reported by OPA or OSPA to the Board. If you wait too long and do not have 23 hours, including 3 hours in professional conduct

and ethics, verified by OPA or OSPA and reported to the Board by August 31, 2004, your license must be suspended. OPA, OSPA, and the Board need the 30 days from August 31, 2004 to September 30, 2004 to process the renewals and MCE that were received on time. Find good courses, complete your hours, and be in the first batch of renewed licenses next July. Early renewal also helps you avoid timing problems when notifying third parties of your license renewal—like panels and Medicare.

**CONTINUOUSLY UPDATE SUPERVISION CHANGES.** Do not wait to check the status of your supervision records until you are completing your license renewal form. As usual, you will be required to list the names of your supervisees on your renewal form. Please advise us of any additions or terminations as timely as possible. All changes to supervision must be submitted to the Board in writing by email ([psy.sup@exchange.state.oh.us](mailto:psy.sup@exchange.state.oh.us)), fax (614/728-7081), or mail.

**PLAN TO RENEW IN JULY.** Did you know that renewing early could substantially reduce stress and improve the quality of your life? If you make sure that we have your current address, complete your MCE hours before August 2003, and send all MCE certificates to OPA or OSPA and not the Board, you will be prepared to renew next July, 2004. The wrong address, a day late, or an hour short (an MCE hour, that is) means trouble.

### LAWS AND RULES

Updated Ohio Psychology Laws and Rules books are available for purchase. The new books reflect statutory changes from SB9, associated rule changes, and new rules regarding pre-hearing processes. The updated laws and rules can also be found on the Board's website via a link to the online version and via pdf files for viewing and printing. If you want a book mailed to you, send a check or money order to the Board office payable to Treasurer, State of Ohio, in the amount of \$6.50. Without postage, books may be purchased in the office for \$4.75. This is likely the final "book" form of the laws and rules, as technology and budget issues make it easier and more cost effective to use the Internet for dissemination of laws and regulations.

### RESOURCES FOR THE COMPETENT PSYCHOLOGIST

Specialty Guidelines for Forensic Psychologists. Approved by APA Division 41, the American Psychology-Law Society, are available on a link from the Board homepage and online at: [www.unl.edu/ap-ls/foren.pdf](http://www.unl.edu/ap-ls/foren.pdf).

Guidelines for Child Custody Evaluations in Divorce Proceedings, published by APA, are available on a link through the Board's homepage and online at [www.apa.org/practice/childcustody.html](http://www.apa.org/practice/childcustody.html).

Greenberg, S. A. and Shuman, D. W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice* 28 (1), 50-57.

*Portions of the feature article in this Alert! are based on and should be credited to Drs. Greenberg and Shuman.*

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*Question: When a client requests a copy of his or her own file, what are my options? What if I determine that it may cause harm to my client due to a risk of misinterpretation of what I have written?*

Answer: Recent legislation (ORC 3701.74, effective April 2003) gives clients/patients broad and perhaps unfettered access to their psychological records. The law appears to provide psychologists no right to deny access and no right to send records to another professional. ***This law provides physicians and chiropractors with the right to send records to another physician or chiropractor if they believe that the record might have an adverse affect on their patient, although no such right is provided to psychologists.*** Since this is a state law, it likely overrides all rules of the State Board of Psychology and any APA ethical standards used to interpret the Ohio Rules of Professional Conduct. Many psychologists are uncomfortable with requests for records and releasing records to a client. Some psychologists insist on writing a summary of the record, thereby creating yet another record. Others ask clients to read the record in the professional office. Psychologists who use these procedures should probably seek legal advice about how to handle requests for medical records, including whether a psychologist has the right to offer a client anything other than the entire record. This may reinforce the old adage to assume that anything you write will end up in the client's living room and on the overhead projector of a courtroom.

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*Question: My 7 year-old client's parents are divorced and remarried. The mother moved to Florida and has left several messages for me with questions about the child's treatment. My client's father has residential custody in Ohio and brought the girl for treatment. Mom seems to be neglectful and I don't trust that the mother has her daughter's best interests in mind. What do I need to tell her?*

Answer: OAC 4732-3-01 (L) defines "Client" as ***"the patient or that person's legal guardian or any other receiver of psychological services."*** This means that both parents/guardians of your minor clients should be conceptualized as clients regarding issues such as access to records, authorizing release of records, and keeping the "client" informed about services. Any parent who has not been legally divested of parental rights has the same right to authorize the release of records and to review records as a "residential" or "custodial" parent. Many experts in this area make certain that all adults with rights to companionship time with the child are supportive of the treatment at the outset in an effort to prevent sabotage.

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*Question: I want to check out my thinking from time to time when a tricky or unusual issue comes up in my practice. What are my options?*

Answer: All licensees are expected to have a reasonable working knowledge of the laws and rules governing psychologists and school psychologists and of professional ethical standards. ***Licensees have options when facing an ethical dilemma or questions about applying the laws and rules to professional practice.*** In addition to consulting knowledgeable colleagues, you might consult:

- Professional associations (e.g., OPA and APA) provide consultations to members.
- Liability insurance carriers often provide advice and direction on professional practice issues.
- Attorneys who specialize in mental health practice are a critical source for actual legal advice.
- The Board web site has been redesigned to include reminders and alerts on important issues.
- The Board administrative staff can provide references to laws, rules, and Board policy. Be aware that neither I, nor other staff members, can offer Board "positions" on issues and do not profess to give legal advice. We have determined that answers to most licensees' questions posed to the Board staff could have been answered by reviewing the Rules of Professional Conduct [OAC 4732-17]. Written summaries of callers' discussions with staff members are typically prepared after each call and kept on file and may become subject to disclosure as "public records" under Ohio law.

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*Question: I have a client who is going through a nasty divorce. Her husband is wealthy and is trying to steal the kids from her through litigation. I know she's a good parent and I know her better than anyone else. What's the problem with advocating for my client by writing a letter to her attorney or the court on her behalf?*

Answer: After reading the feature article in this ALERT!, remember that attorneys are agents of a Court and to provide written or verbal testimony for an agent of a Court is to typically be in the role of a "forensic expert" and most likely involves an inherent role conflict. As the therapist, remember that you reasonably lack the objectivity required to give opinions that might influence a decision in a domestic matter (or personal injury or other matter). ***If "advocating" means giving opinions about visitation (now referred to as "parenting time") or custody (now referred to as "allocation of parental rights and responsibilities") or parental capacity, then this likely violates several regulations.*** If "advocating" means keeping it to the facts about the treatment and not giving opinions outside of your role as a therapist, this may be alright. Remember that a parenting recommendation FOR one person is a recommendation AGAINST another person. If you have not evaluated all parties consistent with prevailing standards, this is a recipe for problems. Complaints are likely to follow if you make statements about any person you have not evaluated within a clearly defined forensic role.