



SELF-PROTECTION FOR PSYCHOLOGISTS IN CHILD CUSTODY EVALUATIONS

a message from the chair

Jane E. Perrin, Ph.D.

Child custody evaluations are important services provided by psychologists. In recent years, they have also been the source of an inordinate number of ethics complaints to the North Carolina Psychology Board. Not surprisingly, when I tell other psychologists that I conduct these evaluations their responses almost invariably include phrases like “ten foot pole” or “target on your back.” In fact, almost all practicing psychologists can find themselves in the child custody arena, because these evaluations nearly always include data collected from professionals who have treated members of the family. Many of us are potentially at risk for receiving a complaint related to a child custody evaluation.

Some complaints may be unavoidable because of the adversarial, intensely emotional nature of child custody evaluations. At least one parent may feel wronged by the evaluating psychologist’s opinions. Not uncommonly, academic, legal, medical, and mental health professionals, as well extended family members, are also involved in the process and may themselves feel aggrieved.

The majority of complaints against psychologists involved in this type of work are not found to result in disciplinary action. That is cold comfort, though, to the psychologist who receives an ethics complaint, spends hundreds or thousands of dollars on legal fees, and awaits the completion of an investigation by Board staff. Unfortunately, because of the volume of information collected in these evaluations, Board investigations related to child custody evaluations may take longer than average to complete, which likely compounds the respondent’s anxiety.

By becoming aware of areas in which others have found themselves the subject of ethics complaints, I think we can better manage our own risks. In particular, examiners involved in child custody evaluations need to be aware of the words they use, and – equally important – how they say them. As a member of the Board, I am told of all ethics complaints, but I hear relatively few details of the cases in which the Board’s Probable Cause Committee finds no basis for possible disciplinary action (see probable cause committee article on p.3). Therefore, I consulted with Board investigators Randy Yardley, M.A., and Susan Batts, M.A., to supplement what I see as issues that seem commonly to provoke ethics complaints. My comments that follow are informed by their reports as well as my own observations.

Communication: A child custody evaluation is undoubtedly stressful to parents, and they may not take in all of the information the psychologist tries to convey. Nonetheless, Mr. Yardley pointed out that some complaints have resulted from ineffective communication of facts such as the anticipated cost and length of time to complete the evaluation. Evaluators might consider creating a checklist of these and other issues to discuss with the parties, and written information for the parties to take home. Meeting with both parties at the intake session ensures that they are given identical information about the parameters of the evaluation process. If a report is likely going to be delayed or more costly than originally estimated, the examiner might also advise the parties of this during the course of the evaluation.

Mr. Yardley said poor communication was also apparent in complaints in which the complainant expected the examining psychologist to behave like a treating psychologist. Although the examiner may ask questions about sensitive and otherwise private matters, he or she is not relating to the parties as a therapist. The examiner is advised to clarify to parents that it is not consistent with his/her role as evaluator for them to look to him/her for advice, sympathy, or encouragement during the evaluation process. That is the job of their lawyers or their therapists. Similarly, the examining psychologist may reduce misunderstandings by telling the parties that he/she is not the person to turn to for help when there is an emergency. Finally, the examiner needs to make clear to the parties that they do not enjoy the same privilege of confidentiality with the examiner that they do with a treating psychologist. Not only are all of the examiner’s records discoverable by the attorneys, but the

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examiner cannot promise to withhold information from the other party during the course of the evaluation nor in the final report. The report itself may be read by the other parent, the lawyers, the judge, and other professionals, and could potentially be entered into the court record.

Psychologists who participate in these evaluations as collateral sources are also subject to misunderstandings with their clients. Often, when a parent in a custody evaluation gives me permission to talk with his/her treating psychologist, the expectation seems to be that the psychologist will be his/her advocate. In fact, the treating psychologist will likely be asked questions that may not elicit favorable responses for the client, such as about diagnosis, prognosis, relapses if there are substance abuse issues, judgment, suicidal tendencies, and impulse control. The negative reaction of a parent who anticipates only a complimentary report by his/her therapist can be easily imagined. By anticipating this and alerting the client to their professional role and responsibility, treating psychologists may prevent a rupture in the therapeutic relationship as well as an ethics complaint.

Bias: Ms. Batts and Mr. Yardley stated that some complaints have been based on examinees' perceptions that the examiner exhibited bias against the complaining party in the evaluation process. Psychologists who are consulted as collateral sources are vulnerable to the same charge of unfairness. Ms. Batts and Mr. Yardley advise examining psychologists to be cognizant of actions that could create the appearance of partiality, such as by conducting tests on one parent but not the other without sufficient rationale. Sometimes in reports he has seen, Mr. Yardley said, the psychologist has made gratuitously complimentary or unflattering remarks about a parent. As example, he recommended that evaluators refrain from comments like, "The father was a fine looking 32 year old man." Psychologists need to be sensitive to their attitudes about cultural, gender, religious, and racial factors that may inappropriately affect their professional opinions. Continuing education programs about cross-cultural competence may be helpful in sensitizing psychologists to their attitudes. In some practices, including my own, examiners work in teams. Although it is possible for the teams to develop biases, the inclusion of a second psychologist to evaluate the data and edit the report may provide some safeguard against personal biases appearing to affect the evaluation.

Adherence to the data: Ms. Batts stated that psychologists "get into trouble by drawing conclusions without having collected much data and not from a variety of sources." She added that problems also arise when the evaluator "puts too much stock in what the opposing parent has to say without reviewing the facts" for himself/herself. Ms. Batts reported that failure to attempt to obtain corroborative information from disinterested sources has placed psychologists at risk for ethics complaints. A related problem has occurred when psychologists have not kept adequate records of information on which they have based their opinions.

Psychologists serving as collateral sources have received complaints for comparable missteps, Ms. Batts stated. She remarked that problems have arisen when the treating psychologist has made judgments about people he/she has not professionally evaluated. It is important for the treating psychologist to distinguish between what has been reported by the client and what he/she knows from direct experience with the individual.

Some of the bases for complaints described by Mr. Yardley and Ms. Batts have self-evident preventive measures, as follows.

Sloppy Reports: According to Ms. Batts, complaints have been generated when reports have large numbers of typographical errors, confusion regarding the names of the examinees, and other evidence that the examiner has not attended to details.

Attitude: Mr. Yardley told me that some recent complaints have been based on perceptions that the psychologist was arrogant to the parties being evaluated. Parents who are the subject of custody evaluations often have already been put through a gamut of personal attacks by the opposing attorney and the other parent. Understandably, these individuals may be particularly sensitive to signs of disrespect. The examiner has the responsibility to be aware of examinees' apprehensions.

Psychologists who participate in child custody evaluations as examiners or collateral sources may be exposed to special vulnerability to ethics complaints, but they are also in a position to make important contributions to the lives of children. I hope that by taking steps to minimize the former, we will maximize our ability to do the latter.

BOARD MEMBER VACANCY

On June 30, 2010, there will be a vacancy for a Licensed Psychologist Associate on the NC Psychology Board. To be eligible for nomination an LPA must:

1. Be a resident of North Carolina and the United States.
2. Be actively engaged in one or more branches of psychology or in the education and training of psychologists, or in psychological research for at least five years, the two most current of which must be in North Carolina.
3. Be free of conflict of interest in performing the duties of the Board.

Please contact the NC Psychology Board if you have any questions about the responsibilities of a NC Psychology Board Member.

If you are interested in this position please send a letter of interest and your vita by March 31st to the:

North Carolina Psychological Association
104 Dresser Court
Suite 106
Raleigh, NC 27609.

WORKINGS OF THE PROBABLE CAUSE COMMITTEE

John Esse, Ph.D.

If a complaint about a licensee is submitted to the Psychology Board, or if Board staff independently identify a possible ethical or legal violation (such as non-compliance with supervision requirements), an investigation is typically undertaken. It then becomes necessary to determine if there is evidence that would make a reasonable person believe that wrongdoing may have occurred, i.e., if there is probable cause of a violation. For the past 1½ years, I have served on the Probable Cause Committee of the North Carolina Psychology Board (hereinafter referred to as "the Committee"). It occurred to me that sharing some of my experience of being on that committee, along with some information about the Committee's process, may be of interest.

The Committee consists of the Board's Staff Psychologists, Executive Director, and one Board member who is appointed by the Board Chair. The Board's attorney also participates as an advisor in Committee meetings, which are usually held via telephone conference calls. Before each meeting, Committee members review investigative reports prepared by staff, along with relevant associated documents. The investigative reports reviewed by the Committee do not identify any individual by name, but do so, rather, in a coded manner. During the meeting, the Committee discusses each case and decides whether there is probable cause to believe that legal and/or ethical violations have occurred. If the Committee determines that there is probable cause, it generally directs staff to issue a statement of charges containing the Committee's allegations, as well as the specific elements of statute, rule, and/or ethical standards which the alleged conduct by the licensee violated.

Prior to issuance of a statement of charges, the case is not reviewed by the full Board. The only information provided to the Board at its next meeting following review by the Committee is that there is probable cause to issue a statement of charges. The purpose for sharing no other information is to assure that, if the licensee receiving a statement of charges exercises his/her due process right to a formal hearing before the Board, there is no appearance of or potential for bias on the part of the Board by any information received prior to the hearing. Should there be such a hearing, the Board member who serves on the Committee ordinarily would not participate as a member of the hearing panel.

If no statement of charges is issued, the case is reviewed by the full Board at its next scheduled meeting. In such a scenario, the Committee informs the Board that it judged that there was no basis for issuing a statement of charges and provides a summary of the case. The name of the psychologist about whom the complaint was filed is provided to the Board only after the Board confirms the decision of the Committee not to proceed with a statement of charges.

As any professional is aware, to be sanctioned by one's licensing board is a major event. Decisions made by the Committee can potentially have a lasting effect on an individual's career. Knowing this, participants undertake their responsibility on the Committee with the greatest seriousness. Every attempt is made to be fair by forming opinions based only on the facts revealed during the investigation in relation to the North Carolina Psychology Practice Act, Licensing Board Rules, and the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct*.

Equally important to being fair to the psychologist is to take into full account the nature of and details concerning the allegations made by the complainant. The Committee does not make decisions that are intended to protect the psychologist from possible consequences when his/her behavior warrants a statement of charges.

These dual objectives are by no means incompatible. I believe that the Committee does function in a fair and thorough manner, and that good decisions are generated. When a statement of charges is issued, most often this leads to an agreement between the psychologist and the Board in the form of a Consent Order which stipulates the facts that support the legitimacy of the order.

The above notwithstanding, an ultimate safeguard of fairness is that the affected psychologist has the right to request a formal hearing before the full Board based on the allegations made by the Committee. At such a hearing the psychologist may choose to be represented by an attorney. With or without representation, he/she is entitled to present witnesses, to introduce evidence on his/her behalf, to cross-examine witnesses, and to examine evidence introduced on behalf of the Board. Subsequent to receiving evidence presented in a formal hearing before the Board regarding the allegations set forth in the statement of charges, the Board moves into executive session to determine what, if any, disciplinary action should be taken against the psychologist's license. The Board later issues a written final decision in the matter.

COUNTDOWN

▶ Licenses must be renewed by October 1, 2010.

▶ If you were licensed to practice psychology in NC *before* October 1, 2008, you *must* obtain 18 hours of continuing education (CE) for the 2010 renewal cycle.

▶ If you were licensed to practice psychology in NC *after* October 1, 2008, you *will not* have to obtain CE for the 2010 renewal cycle.

▶ At least nine hours of CE must be from Category A (you may obtain all of your CE from Category A) and three hours must be in ethical and legal issues.

▶ Continuing education requirements are available online at www.ncpsychologyboard.org, under the "Continuing Education" link located on the sidebar.

PARENTING COORDINATORS

Sondra C. Panico

The Board and its staff have received inquiries about the activities and services of parenting coordinators and the Board's authority to investigate them. This article is written to provide a summary of the authority of a parenting coordinator and what, if any, role the Board has in monitoring parenting coordinators.

On October 1, 2005, the Parenting Coordinator Article of the General Statutes, N.C. Gen. Stat. § 50-90 et seq. went into effect. This Article authorizes a district court judge to order the appointment of a parenting coordinator in child custody cases in certain situations. A parenting coordinator may be appointed by the court without the consent of the parties only when the court makes specific findings that the matter is a high conflict child custody case, that the appointment of the parenting coordinator is in the best interests of any minor child, and that the parties are able to pay the parenting coordinator's fees. Without such findings, the court shall not order the appointment of a parenting coordinator unless the parties' consent. In the latter case, however, if all parties consent to the appointment, the court may order the appointment of the parenting coordinator without such specific findings.

The court order appointing the parenting coordinator specifies the issues the parenting coordinator is directed to assist the parties in resolving and deciding. The parenting coordinator's authority must be specified in the court order which appoints the parenting coordinator and shall be limited to the following:

- 1) Identify disputed issues.
- 2) Reduce misunderstandings.
- 3) Clarify priorities.
- 4) Explore possibilities for compromise.
- 5) Develop methods of collaboration in parenting.
- 6) Comply with the court's order of custody, visitation, or guardianship.

The court may also authorize the parenting coordinator to decide issues regarding the implementation of the parenting plan that are not specifically governed by the court order and which the parents are unable to resolve.

The Board has received complaints from litigants who are dissatisfied with the work of the parenting coordinator. Such complaints at times have involved allegations of bias on the part of the parenting coordinator, too high fees, or incompetence of the parenting coordinator.

Pursuant to N.C. Gen Stat § 50-92(c), "The parenting coordinator shall not provide any professional services or counseling to either parent or any of the minor children. The parenting coordinator shall refer financial issues to the parties' attorneys."

Because the parenting coordinator is prohibited from providing professional services or counseling to the parties or children, he/she is not authorized to practice psychology (which is providing professional services) while acting as the parenting coordinator. If the parenting coordinator engages in the practice of psychology, then he/she is stepping outside of his/her role as parenting coordinator, and the Psychology Board could investigate the matter. In such a case, the investigation could only involve whether the parenting coordinator's practice of psychology violated the NC Psychology Practice Act or the *Ethical Principles of Psychologists and Code of Conduct*. The Board has no authority to investigate whether the parenting coordinator did anything improper if he/she is not engaged in the practice of psychology and only acting within his/her role as a parenting coordinator.

Complainants have expressed frustration to Board staff about the fact that the Board is not able to investigate what the psychologist is doing when serving as a parenting coordinator; however, without statutory authority, the Board is not authorized to investigate these issues.

The Board's understanding in communication with other professionals who are involved in the parenting coordinator arena is that the court itself is the entity to complain to about the parenting coordinator and that the court could review the matter. Pursuant to N.C. Gen. Stat. § 50-99, the court has the authority to remove the parenting coordinator from a case for good cause shown, which includes that the parenting coordinator is unable or unwilling to serve. The Board also understands that the different counties in North Carolina have a variety of systems in place to investigate complaints against parenting coordinators and that some counties have more structured systems in place while others rely solely on the judge to handle the complaint.

Unless the Board is given the statutory authority to investigate complaints made against a psychologist when he/she is serving in the role of a parenting coordinator, the Board will continue to lack jurisdiction over these issues.

NOTE: This article was prepared for the North Carolina Psychology Board by Sondra Panico, Assistant Attorney General and Counsel to the Board. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

LEGAL PROCEEDINGS

During the period of time from October 1, 2009, through December 31, 2009, the Board reviewed and closed eleven investigative cases involving psychologists in which it found either no evidence of probable cause of a violation or insufficient evidence to issue a statement of charges, and reviewed and closed one case involving a non-psychologist. Further, it took the following action:

James Wesley B. Manuel, Psy.D. - FINAL DECISION was approved and signed on December 3, 2009. Dr. Manuel's conduct was found to be in violation of N.C. Gen. Stat. § 90-270.15(a)(3) and (a)(22). Dr. Manuel's applications for licensure and health services provider certification at the psychologist level are DENIED.

Kristel K. Rider, M.A. - CONSENT ORDER was approved and signed on December 3, 2009. Ms. Rider admits that the described conduct constitutes violations of N.C. Gen. Stat. § 90-270.15(a)(10), (a)(18) & (a)(20) of the North Carolina Psychology Practice Act, and Standards 3.06, 3.08, and 10.08(a) of the *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association 2002). Ms. Rider's license is REVOKED, and she must remit \$300.00 in costs.

NOTE: License verification is available on the Board's website and includes whether or not Board action has been taken on a license.

WELCOME



NEW YEAR, NEW FACES

THE BOARD WELCOMES NEW BOARD MEMBER, LYNN LAMBERT

Sarah Lynn-Sells Lambert is the newest public member of the NC Psychology Board. She has had a long career in the healthcare sector, having been a practicing nurse for several years before later becoming a nursing instructor at Sandhills Community College, where she taught for over 30 years.

During the course of her career, Ms. Lambert was the recipient of the Distinguished Professor of Health at Sandhills Community College Award, sponsored by First Health-Moore Regional Hospital. She was also selected to help organize the NCLEX-RN (National Council Licensure Examination) for Registered Nurses. Of the twelve nursing instructors selected from across the country, Ms. Lambert was the only representative chosen from North Carolina and one of only two instructors selected from a community college nursing program.

While Ms. Lambert loved teaching, she knew it was time to retire when one day she encountered a young man reviewing a patient's chart. After mistaking him for the high school volunteer, she was surprised to discover that this young man was indeed a physician or a real life "Doogie Howser," as Ms. Lambert likes to refer to him.

Obviously, someone from the Sandhills area is most likely going to enjoy golf. According to Ms. Lambert, playing golf is the required pastime there, and with over 100 golf courses nearby, Ms. Lambert tries to participate regularly in this local hobby. However, her greatest enjoyment comes from seeing her former students and hearing about their endeavors in the nursing profession.

After retirement, Ms. Lambert wanted to utilize her knowledge and experience in the healthcare industry in a different way. After carefully considering the duties and responsibilities for a Psychology Board member, Ms. Lambert decided that it was the right opportunity for her at the right time. She was appointed to the Board by the Governor's Office in the fall of 2009 and says that she is truly honored to serve as one of the Board's two public representatives.

THE BOARD WELCOMES NEW STAFF MEMBER, REBECCA OSBORNE



Rebecca Osborne is the Board's newest staff member, replacing April Everett, who left the Board at the end of last year. As the Board's Communication Specialist, Ms. Osborne will be working mainly in the areas of continuing education and supervision. She also serves as editor of the Board newsletter.

Prior to working for the Board, Ms. Osborne worked as a technical writer for a software company and as a copywriter/graphic designer for a marketing agency. In her spare time, Ms. Osborne loves to be outdoors and enjoys hiking, mountain biking, and boating.

A 2005 graduate of Appalachian State University with a B.S. in Communications, Ms. Osborne is exceedingly happy to be back in Boone, provided it does not snow too much. Ms. Osborne is pleased to be working for the Board and is grateful for the warm welcome she has received from everyone at the Board since she began working here.

FREQUENTLY ASKED QUESTIONS

As a licensed psychological associate, why am I required to file a Supervision Contract Form with the Board when I am not engaged in activities requiring supervision or am not even involved in the practice of psychology?

The contract, in its earliest days, was a one-page, one-sided document upon which an LPA attested that he/she engaged in activities requiring supervision, or that his/her functioning was limited to activities not requiring supervision. Many licensees and applicants today would undoubtedly cheer for the revival of the one-page contract form. However, a little background is necessary to understand the necessity of the Supervision Contract Form, and how it came to be in its current, four-page state.

The Board is charged with carrying out the provisions of the NC Psychology Practice Act. One of the provisions in the Act, G.S. § 90-270.5(e), requires that licensed psychological associates be supervised if engaged in specified activities. In the days of the one-page contract, the Board did not require a description of professional duties and responsibilities. Unfortunately, the Board found, at times, that some individuals attested incorrectly that they were not engaged in activities requiring supervision. As a result, the contract experienced a facelift and gained three more pages. Section 1 was created for individuals engaging in activities requiring supervision, Section 2 for individuals not engaging in activities requiring supervision, Section 3 for school psychologists practicing under North Carolina Department of Public Instruction licensure, and Section 4 for individuals not engaging in the practice of psychology. In the mid-90's, the contract was simplified to two sections, one for individuals engaging in activities requiring supervision, and one for those who were not.

Pursuant to Board rules 21 NCAC 54 .2007(c), .2008(e), and .2009(f), all applicants, licensed psychological associates, and provisionally licensed psychologists must file a contract form to "document either that supervision is required and shall be received, or *that supervision is not required.*" A new or revised contract must also be filed within 30 days of a change in the conditions specified in the contract form on file. The detail requested on the current form is considered by the Board to be necessary for the Board to fulfill its responsibility to assure that these requirements are met.

The Board welcomes feedback that will assist in improving forms and instructions. If you have a suggestion, you may share it by e-mail, fax, or mail. If you have any questions about current supervision requirements, please note that Board staff are available to answer questions, including any about contract or report forms.

I was licensed on July 1, 2008, as a provisional psychologist, and will be eligible to apply for permanent licensure soon. If I am granted permanent licensure before license renewal in 2010, will I be required to attest to having completed continuing education requirements?

Yes. Board rule .2104 states that "an individual licensed after October 1, 2002, must attest on the second license renewal application following licensure, to having met the mandatory continuing education requirements." Because you were licensed to practice psychology before October 1, 2008, that cycle was considered your first renewal, and October 2010 is considered your second. Even if you change your level of licensure in the middle of the renewal cycle, the Board goes by the date you were first licensed to practice psychology in North Carolina (in your case, July 1, 2008).

I have a corporation registered with the Board and have missed the deadline to renew. Can I still renew at this point?

Yes. In order to renew your corporation after the deadline, you must pay a fee of \$35.00 (\$25.00 renewal fee plus a \$10.00 late penalty). Be sure to include a copy of the renewal application with the fee, making any necessary changes to contact information in the appropriate portion of the form. Your fee will not be processed until the renewal application is received.

BOARD MEETINGS

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FEBRUARY 17-19, 2010

MAY 5-7, 2010

JULY 21-23, 2010

SEPTEMBER 22-24, 2010

DECEMBER 1-3, 2010

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