

## Frequency of Child Custody Evaluation Complaints and Related Disciplinary Action: A Survey of the Association of State and Provincial Psychology Boards

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Psychologists who conduct child custody evaluations take their practices into a most challenging and stressful area. This study surveyed the 61 member boards of the Association of State and Provincial Psychology Boards (ASPPB) about number and category of child custody complaints in the last decade, number of findings against psychologists, and related disciplinary action. Results reveal that psychologists who accept work in this area are extremely likely to also encounter the anguish of defending a related licensure board complaint at some point.

A persuasive domestic lawyer calls you seeking a child custody evaluation relating to her client whose wife has taken the kids and left him for another person. She offers a large retainer fee to secure your services and makes it very clear that the legal team's strategy is to launch an adversarial assault campaign in support of winning the custody battle. What would you do? How would you handle the request? Is your office staff adequately prepared to handle similar calls? How would you proceed toward the evaluation? What would be the likelihood that you would hear from your licensure board later with a formal complaint?

The area of child custody evaluations is potentially one of the most stressful and difficult for psychologists because of high levels of emotionality and acrimony associated with the process and the participants. In a recent large-scale survey of Texas psychologists, Montgomery, Cupit, and Wimberly (1999) found that child custody cases were second only to sexual misconduct cases in terms of likelihood for occurrence of board complaints and malpractice actions. Because of these factors, it is speculated that child custody

evaluations are among the most dangerous and risky endeavors for psychologists, owing to high levels of stress, threat of litigation, risk of board complaints, and even the possibility of personal harm. The reason for the addition of metal detectors in many courthouses is due primarily to the stress of domestic cases, rather than criminal cases, a stress that increases risk for violence. As one seasoned domestic court judge informed us, "Nothing makes people act crazier any faster than a custody battle" (J. L. Capell, Domestic Court Judge, 15th Judicial Circuit, Montgomery, Alabama, personal communication, July 23, 1999).

Glassman (1998) noted that between 7 and 10% of all new cases of ethics violations compiled by the American Psychological Association (APA) between 1990 and 1994 concerned a custody evaluation complaint. Glassman also sought Association of State and Provincial Psychology Boards (ASPPB) data but was unable to collect enough information at the time of his study to permit meaningful analysis. The range of ethical and licensure board punishments in Glassman's study of APA ethics violations ranged from mandatory continuing education to monetary fines. Findings of probable cause in this survey were rare, and serious disciplines such as suspension or revocation were absent.

The APA Ethics Committee summarizes its activity each year in the "Annual Report" issue of the *American Psychologist*. In 1998, child custody evaluations made up 11% of all categories of ethical violations, compared with 58% in the area of sexual misconduct (APA Ethics Committee, 1999). The range of disciplines listed for the custody evaluation category ranged from "censure" to "censure with specific directives." Child custody cases were the only forensic category that warranted a singular, separate entity.

A survey of licensure boards of other professions demonstrates how unique this area of problematic regulation is to the field of professional psychology. Interviews with the coordinator of the disciplinary arm of the American Bar Association revealed that the category of child custody evaluation was not even an entry in their categorization of violations. The Federation of State Medical Boards was not aware of child custody complaints as even being an entry in their Disciplinary Data Bank. The phenomenon of

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burgeoning child custody complaints is apparently limited to the field of professional psychology.

In the early 1980s, it was not uncommon to find psychologists involved in an adversarial manner in child custody battles. In this scenario, the psychologist was often a part of the legal team and functioned in an adversarial posture that was very much in keeping with an acrimonious environment. As the field developed, it became increasingly apparent to ethical committees, professional associations, and regulatory boards that the adversarial role was contrary to the "best interests" standard of children. As the law evolved away from the "Tender Years Doctrine," in which maternal parental capacity was given a clear preference, the role of the professional psychologists in this setting changed dramatically.

By the early 1990s, ethical guidelines were increasingly directing psychologist-evaluators to assume an objective, child-oriented stance (American Psychological Association, 1994; Melton, Petrila, Poythress, & Slobogin, 1997.) Melton et al. (1997) stated, "We suggest that clinicians seek to enter custody disputes as an expert for the court or the guardian ad litem" (p. 500). As legal standards evolved toward the best-interests standard, the role of the psychologist-evaluator likewise moved toward an independent "friend of the court" status. Melton et al. (1997) pointed out that relevant interviewing, evaluation, and testing are the proper roles of the examiner, leaving ultimate opinion decisions up to the trier of fact.

The state psychology licensure board of Colorado has sought to solve this problem by statutory change—with support of both the licensure board and the state psychological association. The Colorado legislature recently passed a law prohibiting child custody evaluations from being the subject of discipline by the state licensure board (Colorado Mental Health Statute, 1998).

In response to growing numbers of complaints, the board and legislature reasoned that the court-appointed status of the psychologist-evaluator should exempt the practitioner from defending the typical acrimonious complaints of an angered party. This unique solution to the problem of increasing complaints in this area is limited to Colorado at this time (Colorado Mental Health Statute, 1998). It could certainly be argued that such an exemption goes too far in reacting to what appears to be a maelstrom of complaints. This statutory solution may be an overreaction to the growing problem of excessive complaints because the legislative "cure" would prevent state licensure boards from having jurisdiction and regulatory control of a most important area of consumer protection. The change also reflects a process of legislative intrusion into the executive branch of government, in which state psychology licensure boards are located.

Amos Martinez, program administrator of the six mental health licensure boards in Colorado, provided the background to this scenario in a recent interview (personal communication, December 17, 1999). Martinez reported that in 1992 all six mental health boards jointly approached the Health, Education and Welfare Committee of the Colorado legislature with the request for the statutory change. Martinez observed that the boards requested the exemption in their laws because of the shared view that child custody evaluations created fertile ground for frivolous grievances. The boards testified that the proper audience for such concerns was the original trial court, not the regulatory board. The legislature agreed that the best venues for evaluating the variables associated

with expert testimony were the trial court judge and the adversarial process.

### Child Custody Complaints and Disciplinary Action

In the current study, all 61 member boards of ASPPB were mailed a brief one-page survey. The survey was accompanied by a self-addressed, stamped envelope. Boards that did not respond were contacted by telephone for an interview concerning the survey. Completed survey data were collected from 34 of the 61 boards, resulting in a response rate of 56%. The survey addressed four areas: (a) the actual number of child custody evaluation complaints filed with each licensure board between 1990 and August of 1999; (b) the nature of each complaint (e.g., misuse of tests, violation of confidentiality, conflict of interest, etc.); (c) the number of complaints that resulted in disciplinary action against licensees; and (d) the type of related disciplines. Table 1 shows the results of the survey.

Results reveal that among the 34 states and provinces in the sample, there were a total of 2,413 complaints filed against licensed psychologists in the area of child custody evaluation violations. Results further revealed that of these 2,413 complaints, only 27 or 1% resulted in findings of formal fault or probable cause against licensees. Several additional boards were contacted but could not be incorporated into the study because they were unable to track their complaint history in an accurate or meaningful manner. However, these boards consistently confirmed the trend of findings of frequent complaints but few findings of probable cause for discipline.

Table 2 lists the range of disciplinary actions taken, rank-ordered among the 27 positive findings of fault reported in the sample. Results revealed that disciplinary actions ranged from requiring continuing education in the area of child custody evaluation to 5 years probation. Many times boards combined different disciplines such as requiring continuing education and the payment of board investigative costs. The New Jersey board uses an interim finding of fault between no probable cause and specific findings of violation. In addition, this board has issued 15 confidential letters of admonishment, not reportable to the ASPPB Disciplinary Data Bank between 1990 and 1999. However, both the complainant and the licensee are informed of this private censure.

### Discussion

Results revealed a total of 2,413 complaints against psychologists performing child custody evaluations among 34 licensure boards between 1990 and 1999. Out of these complaints, boards issued discipline in 27 cases for an occurrence rate of 1%.

In the area of child custody evaluation, licensure boards report dramatic increases in frequency of complaints over the past decade. However, the numbers of findings of formal fault based on probable cause are quite few. The acrimonious nature of the typical child custody battle is apparently accompanied by a very low threshold for filing formal complaints with state licensure boards against practitioners. Board members from two jurisdictions reported that they each knew of a practitioner in their state with as many as seven separate complaints concerning child custody eval-

Table 1  
*Child Custody Evaluation Complaints, Findings, and Disciplines Among State Licensure Boards*

State or province	No. of complaints (1990-1999)	No. of findings against psychologists	Types of discipline <sup>a</sup>
AL	19	0	0
AR	14	1	Letter of reprimand plus supervision of child custody evaluations for 1 year
AZ	85	2	Decree of censure (1) 6-month probation with continuing education requirements in child custody evaluation (1)
B.C.	16	0	0
CA	1,660	1	Revocation (stayed), probation (5 years)
CO	37 <sup>b</sup>	1	Letter of admonition
CT	23	0	0
DE	5	0	0
DC	0	0	0
GA	24	0	0
IN	3	0	0
IA	13	0	0
KY	24	2	6-month suspension, 1-year probation, and payment of investigative costs (1) 60-day suspension (stayed), 1-year probation, 1-year supervision, and payment of investigative costs (1)
MA	20	0	0
ME	10	1	Licensee surrendered license
MI	0	0	0
NE	10	3	Required continued education plus 1-year supervision of practice in child custody area (3)
NV	18	0	0
N.F.	0	0	0
NH	10	0	0
NJ	78	3	Supervised practice (1 year), civil penalty of \$3,000, random review of records, and a reprimand (1) Civil penalty of \$1,500 (1) Supervised practice (1 year), educational requirement, and payment for investigation (1)
NM	7	0	0
ND	3	0	0
OH	112	3	Received required continuing education plus supervision of practice in area of child custody evaluation (3)
OK	59	2	6-month probation (2)
Ontario	24	4	Child custody evaluation eliminated from practice (3) 6-month suspension followed by 6-month probation (1)
OR	28	2	Reprimand and civil penalty of \$1,000 (1) Reprimand and 6-month supervised practice (1)
PA	28	1	Civil penalty of \$2,000
SC	25	0	0
SD	45	0	0
VA	9	1	Supervised practice in area of child custody evaluation for 1 year
WV	4	0	0
WI	0	0	0
WY	0	0	0

Note. B.C. = British Columbia; N.F. = New Foundland.

<sup>a</sup> Number in parentheses at end of each discipline represents the number of psychologists who received this discipline.

<sup>b</sup> 1990-1992.

uation practice with no findings of fault or violation in any case.

Practitioners who work in the area of child custody evaluation should expect to encounter a formal board complaint. Most practitioners describe this as a thoroughly harrowing experience, even if the complaint is patently vengeful and frivolous. Clearly, many practitioners will avoid the area simply to eliminate the anguish and trouble of responding to and defending board complaints.

Results reveal that licensure boards have rarely made formal findings of fault against psychologists conducting child custody

evaluations. When there have been findings, the majority of disciplinary actions have been toward the milder end of the continuum of possible punishments. Still, a discipline is a discipline, and a reportable offense follows the practitioner for the remainder of a career. It is said "as California goes, so goes the nation." If the recent numbers in California are any indication of the extent of this swelling tide of complaints, many boards will be in the similar position of hiring a child custody expert to review complaints or of seeking a legislative solution similar to that made in Colorado. As

Table 2  
*Rank Ordering of Range of Disciplinary Action in Child Custody Evaluation Cases From Most to Least Frequent*

Rank	Type of discipline	No. of cases
1	Supervised practice in area of child custody evaluations	12
2	Specific continuing education requirements in area of child custody evaluations	8
3	Formal letter of reprimand or censure	5
4	Civil penalty (\$1,000–\$3,000)	4
5	Payment of board investigation costs	4
6	6-month probation	3
7	Required elimination of child custody work from practice	1
8	1-year probation	1
9	6-month suspension	1
10	5-year probation	1
11	Revocation	0

discussed above, the legislative path may ultimately weaken board authority in this and other areas.

Knowledge of these results may be helpful both for practitioners and for licensure boards that are being increasingly called upon to make judgment calls in this relatively new area of professional activity. It is easy to understand why many practitioners avoid the area altogether. Yet, the best-interests standard for children would clearly direct psychology as a profession to send its best, brightest, and most ethical to assist courts in answering important questions about the many needs of children in divorcing families. These results reveal that revocation of a license is an unlikely consequence of a board complaint in this area. However, it is equally clear that practitioners in this area should also gird their loins and lower their threshold of tolerance for receiving, responding to, and defending formal board complaints.

The most significant number from the point of view of the practitioner would seem to be the total number of complaints. It is astounding that among 34 states and provinces, there has been a total of 2,413 complaints filed against psychologists performing custody evaluations in the last decade. It is true that a given complaint is unlikely to result in a finding of formal fault or in a revocation, but this is little joy for the practitioner whose license is

in administrative purgatory during the response and defense period of the complaint.

Psychologists who venture into the area of child custody evaluation should expect that their work will be under the close scrutiny of courts and the adversarial legal process. In addition, these results strongly suggest that their state licensure board may also conduct a thorough review of their work.

The best defense against what may be an eventual and inevitable complaint would include the following steps: (a) conduct only court-appointed evaluations; (b) ensure that your work reflects a thorough compliance with all specific state and national guidelines for conducting such evaluations; (c) stay on top of the developing ethical and procedural literature in this area; (d) avoid any role conflicts or even possible sources of perceived bias; (e) use multiple data sources for conclusions, particularly interviews with third-party sources; (f) avoid ultimate issue testimony; (g) have parties sign releases and agreements about notification of rights and parameters of limited confidentiality; (h) do not under- or overinterpret test data; (i) document billing practices thoroughly; and (j) create a file that is composed with the assumption that it will be subject to board review.

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