

Consideration of Proposed Amendments to the Board's Guidelines for Physical and Psychological Evaluations

Background: The Board last adopted changes to its Guidelines for Physical and Psychological Evaluations (Guidelines) at its July 2015 meeting. The attached proposed amendments correct outdated references within the Guidelines, decrease the minimum number of years an evaluator must have in clinical experience in a field of practice relevant to a specified evaluation from ten to five, and include requirements for virtual portions of evaluations, in light of the ongoing COVID-19 pandemic. In recommending these changes, Board Staff has consulted with two of the Board's contracted psychologists who serve as experts for the Board.

Board Action: Move to approve the proposed amendments to the Board's Guidelines for Physical and Psychological Evaluations, as set out in Attachment "A".

Attachment “A”

Guidelines for Physical and Psychological Evaluations

The purpose of this document is to inform licensees, applicants, petitioners, and the public about the Board’s requirements and procedures regarding physical and psychological evaluations (evaluations) under the Nursing Practice Act (the Occupations Code Chapter 301).

These Guidelines are intended to ensure that:

- the Board’s evaluation process is consistent and fair;
- evaluation reports include all relevant and necessary information to enable informed decision-making;
- evaluators appropriately explore and explain discrepancies;
- evaluators adequately answer the Board’s referral question(s); and
- evaluators adhere to all applicable standards when performing evaluations.

These Guidelines are not necessarily exhaustive. For additional information, please review the Nursing Practice Act, the Board’s rules, 22 Texas Administrative [Tex. Admin.] Code Chapters 213 and 217, and the Board’s disciplinary policies, located on the Board’s website at www.bon.texas.gov.

I. Authority to Require and Request Evaluations

The Board is authorized under the Occupations Code §301.4521 to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely because of a physical or mental impairment or due to chemical dependency or the abuse of drugs or alcohol¹. In this context, “probable cause” means that the Board has a reasonable, objective basis to believe that an individual is unable to safely or effectively practice nursing due to a psychological or medical condition or impairment. Further, an “objective basis” is one that is not merely speculative on the Board’s part, but derives from direct observation, credible third party report, or other reliable evidence. The overall purpose of a required evaluation is to determine if an individual is able to safely and effectively perform his or her essential job functions, given the individual’s suspected condition or impairment. The Board may initiate action against an individual’s nursing license if the individual refuses to submit to a required evaluation under §301.4521².

¹ For purposes of these Guidelines, the term ‘chemical dependency’ encompasses a substance use disorder diagnosis under the Diagnostic and Statistical Manual of Mental Disorders (DSM- V).

² If an individual refuses to submit to an evaluation, the Board is required to schedule a hearing on the matter at the State Office of Administrative Hearings, pursuant to the Occupations Code §301.4521(d). A hearing officer will issue an order at the end of the hearing either requiring the individual to submit to the evaluation or rescinding the Board’s demand for the evaluation. If an individual refuses to submit to an evaluation after the hearing officer has issued an order requiring the evaluation, the Board may suspend, limit, or refuse to issue or renew the individual’s license.

The Board may also request that an individual submit to an evaluation under the Occupations Code §301.4521 if an individual's prior criminal history, unprofessional conduct, or lack of good professional character is relevant to the determination of the individual's present fitness to practice nursing. An individual may refuse a requested evaluation. However, an individual who refuses a requested evaluation may be subject to certain restrictions imposed by law³.

II. Types of Evaluations

Listed below are examples of the various types of evaluations that the Board can require of an individual.

Required Evaluations

Medical Evaluation
Pain Management Evaluation
Mental health/psychological evaluation
Neuropsychological Evaluation
Anger Management Evaluation
Sex Offender Evaluation
Chemical Dependency (Substance Use Disorder) Evaluation

Listed below are examples of the various types of evaluations that the Board may request of an individual.

Requested Evaluations

Forensic Psychological Evaluation
Forensic Psychological Evaluation with a Polygraph Examination

III. Evaluator Requirements

All evaluators must be approved by the Board. An evaluator must possess the appropriate education, training, and experience required for the specified evaluation, as determined by the Board. An evaluator must also be familiar with the standards and duties appropriate to the nursing profession. Additionally, an evaluator must meet the following general requirements:

1. An evaluator must hold a current, non-encumbered license in good standing from the appropriate licensing authority in Texas.
2. An evaluator must be able to demonstrate training or experience in the evaluation of an individual's fitness to practice.

³ If an individual refuses to submit to an evaluation, the individual will be prohibited from introducing another evaluation into evidence at a hearing at the State Office of Administrative Hearings, unless the individual meets the prescribed requirements of the Occupations Code §301.4521(g).

3. An evaluator must be able to administer and interpret the results of the testing required by the Board for the specified evaluation or utilize the services of a separate approved evaluator who is able to administer and interpret the results of the testing required by the Board for the specified evaluation and appropriately consider and incorporate the results of that testing into the evaluation report.
4. An evaluator must have at least five (5) [40] years of clinical experience in a field of practice relevant to the specified evaluation.

In addition to meeting the Board's general requirements for approval, an evaluator must also meet the following expectations.

1. An evaluator is expected to provide an evaluation in accordance with the regulatory rules and regulations and ethical principles applicable to the evaluator's field of expertise.
2. An evaluator is expected to address any discrepancies between information provided by the Board and information provided by the individual being evaluated. In situations where assessment data and clinical opinions may differ, the evaluator is expected to address the divergent information and give an informed opinion.
3. An evaluator is expected to seek consent to speak with all relevant collateral contacts, including healthcare providers, if necessary, and include in the evaluation report information gleaned from the collateral contacts. Any refusal by an individual to provide consent should be documented and commented on by the evaluator.
4. Although the Board allows for some variation in the specific testing used by an evaluator, an evaluator is expected to provide an adequate battery of psychological assessment instruments to address the Board's referral question(s). These must include those tests mandated by the Board, if any, as well as any others that may be necessary to provide an informed answer to the Board's referral question.
5. An evaluator is expected to provide the Board with a well supported answer to the Board's referral question(s), [including] which should include recommendations for treatment, if any, necessity for further referral, and any other information requested by the Board.

An evaluator must renew his/her Board approval every two years. To remain on the Board's approved list, the evaluator must demonstrate his/her credentials and compliance with these Guidelines. Further, an evaluator must disclose any adverse action against the evaluator's occupational license to the Board within five (5) days of the action. The Board reserves the right to remove an evaluator from its approved evaluator list for failing to satisfactorily meet and/or maintain any of the requirements contained in these Guidelines. In such event, the evaluator will be provided written notice by the Board.

Once notified by the Board that the evaluator has been removed from the Board's approved evaluator list, the evaluator must cease accepting referrals and performing any further evaluations for the Board.

IV. Evaluation Requirements

An evaluation must include ultimate findings regarding an individual's ability to safely and effectively practice nursing based upon a review of the Board's rules of professional conduct, minimum standards of nursing practice, and good professional character.

Required Evaluations

1. **For a neuropsychological evaluation**, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. A neuropsychological evaluation must include the administration of scientifically validated, objective tests designed to evaluate an individual's brain function, including simple motor performance to complex reasoning and problem solving. While the exact tests chosen for administration are within the discretion of the evaluator, the selection of tests should sample a wide range of functional domains⁴. Further, an evaluator should utilize the combination of objective scores, behavioral process observations, and consistency in emerging patterns of results, along with a comprehensive clinical history, in reaching his or her evaluation findings.
2. **For a chemical dependency (substance use disorder) evaluation**, an evaluator must be a licensed psychiatrist who is certified in a relevant field of practice by the American Society of Addiction Medicine or the American Board of Psychiatry and Neurology, a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology, or an individual who is doctorally prepared and specializes in diagnosing and treating chemical dependency (substance use disorders). Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a chemical dependency (substance use disorder) evaluation must include a comprehensive assessment of the individual, along with the administration of the Substance Abuse Subtle Screening Inventory (SASSI-4) [~~(SASSI)~~] and the Minnesota Multiphasic Personality Inventory (MMPI-2-RF or MMPI-3) [~~(MMPI2)~~] or the Personality Assessment Inventory (PAI).

⁴ Two commonly used batteries are the Halstead-Reitan Neuropsychological Battery and the Luria-Nebraska Neuropsychological Battery.

3. **For a sex offender evaluation**, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice or licensure as a sex offender treatment provider may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a sex offender evaluation must include a review of the individual's history, including the review of relevant court documents, police reports, child welfare investigations and reports, prior criminal history records, prior mental health evaluations, collateral interviews, a comprehensive interview of the individual, psychometric testing, risk assessment, and actuarial assessment⁵.
4. **For a medical evaluation**, an evaluator must be a medical doctor or a doctor of osteopathy who is certified in a relevant field of practice. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a medical evaluation must include a comprehensive assessment of an individual's underlying disease process, including information relating to the identification, stabilization, management, and treatment of the disease process, and information relating to the individual's prognosis and medication regime. It is not unusual, however, for a medical evaluation to be coupled with another type of evaluation, and in those instances, each evaluation must individually meet the requirements of these Guidelines.
5. **For a pain management evaluation**, an evaluator must be a medical doctor or a doctor of osteopathy who is certified in a relevant field of practice by the American Board of Pain Medicine. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a pain management evaluation must include a comprehensive assessment of an individual's underlying disease process and of any substance use or abuse by the individual. Further, the evaluation must address the individual's prognosis, medication regime, the individual's ability to safely practice nursing while taking prescription pain medications, and the regular re-assessment of the individual to ensure compliance with the prescribed medication regime. It is not unusual, however, for a pain management evaluation

⁵ Commonly used tests include the plethysmograph, polygraph, MMPI-2-RF or MMPI-3 (~~MMPI2~~), WAIS-4 (~~Wechsler~~), Multiphasic Sex Inventory, Abel & Becker Cognitions Scale, Bumby Sexual Attitudes Scales, Wilson Sexual Fantasy Questionnaire, the Sex Offender Incomplete Sentence Blank, RRASOR, Static-99R or Static-2002R (~~Static-99~~), VRAG & SORAG, and the LSI-Revised.

The Board will likely decline to accept a sex offender evaluation wherein the evaluator has recommended the use of a polygraph, but the individual subject to evaluation declines submission to one.

to be coupled with another type of evaluation, and in those instances, each evaluation must individually meet the requirements of these Guidelines.

6. **For a mental health/psychological evaluation**, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, a mental health/psychological evaluation must include a comprehensive interview of the individual and the use of rating scales, neuropsychological testing, and personality tests⁶ and may include screening for possible a substance use disorder, as determined by the evaluator.
7. **For an anger management evaluation**, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. While the exact tests chosen for administration are within the discretion of the evaluator, an anger management evaluation should focus on an individual's ability to appropriately manage the triggers, degrees, and effects of an angered emotional state⁷.

Requested Evaluations

- [4-] **For a forensic psychological evaluation**, an evaluator must be a licensed psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field by the American Board of Psychiatry and Neurology. Additional experience in a relevant field of practice may be substituted for Board certification in some instances. Alternate Board recognitions, such as fellowships, may also be substituted for Board certification in some instances. Forensic psychological evaluations will generally be utilized to determine whether an individual: (i) is capable of conforming to the requirements of the Nursing Practice Act and the Board's rules; (ii) is likely to repeat the unprofessional or criminal conduct at issue; and (iii) is a danger to the public. While the exact tests chosen for

⁶ Commonly used tests include the Beck Anxiety Inventory, Beck Depression Inventory-II, Brief Psychiatric Rating Scale (BPRS), Bums Anxiety Inventory, Bums Depression Inventory, Hamilton Anxiety Rating Scale, Hamilton Depression Rating Scale, Inventory to Diagnose Depression, Profile of Mood States (POMS), State-Trait Anxiety Inventory (STAI), Symptom Checklist-90-Revised, Taylor Manifest Anxiety Scale, Yale-Brown Obsessive-Compulsive Scale, Kaufman Adolescent and Adult Intelligence Test, Rorschach Inkblot Test, WAIS-4 [~~Wechsler Adult Intelligence Scale III or IV (WAIS-III or WAIS-IV)~~], Wechsler Memory Scale IV (WMS-IV), Category Test, Continuous Performance Test, Halstead-Reitan Neuropsychological Test Battery, MMPI-2-RF or MMPI-3 [~~(MMPI2)~~], NEO Personality Inventory, PAI, and the Thematic Apperception Test.

⁷ Commonly used tests are the Novaco Anger and Provocation Inventory, the Defendant Questionnaire, the Anger Evaluation Survey, the Conditioned Reasoning Test of Aggression, the State-Trait Anger Expression Inventory-2 (STAXI-2), and the Domestic Violence Inventory.

administration are within the discretion of the evaluator, full test battery, including objective, job-related, validated psychological instruments, must be administered to the individual to evaluate his or her cognitive, emotional, and personality functioning⁸.

Further, if a polygraph examination is requested as a component of a forensic psychological evaluation, the polygraph examination must be administered by a licensed polygrapher. Additionally, if a polygraph examination is requested as a component of a forensic psychological evaluation, consultation between the evaluator and the polygrapher [~~examiner~~] on the issues to be covered during the polygraph examination and the results of the polygraph examination is expected. The results of the polygraph should be included in the evaluator's final report.

Components of Evaluation

- A comprehensive clinical interview must be performed as part of any evaluation and should include relevant developmental and medical history; family history; academic history; psycho-social history; history with substance use and/or abuse; legal history; occupational history; psychiatric symptomology and treatment; dating/marital history; mental status and examination; and any other issues relevant to the Board's referral question.
- All areas covered in the clinical interview must be detailed in the evaluation report.
- The interpretation of assessment data and the writing of the evaluation report are to be the work of the evaluator and may not be delegated to students or para-professionals.
- Inclusion of interpretive materials from the authors of the instruments via a computerized interpretive analysis should be re-framed in the evaluator's own words and be relevant to the instant evaluation.
- The name and credentials of any individual contributing to the clinical interview or the writing of the evaluation report must be identified and included in the report.
- If an evaluation is being conducted by two evaluators, each evaluator must individually meet the Board's requirements for evaluators.

Requirements for Testing

1. Any assessment measures used by an evaluator must be empirically supported and well-normed. Any informal checklists and/or inventories must be clearly identified as being informal measures of data collection and must not be represented as a formal, psychological testing instrument.
2. Absent empirical support against their use, an evaluator should use

⁸ The most frequently used tests in forensic evaluations are the MMPI-2-RF or MMPI-3 [~~MMPI-II~~], MCI-III, [~~WAIS-III~~] WAIS-4 [~~WAIS-IV~~], [~~WAIS-III-E~~], Rorschach Inkblot Test, TAT, CPI, PAI, HARE PCL-R: 2nd Edition [~~PLC-R~~], the Test [~~test~~] of Memory Malingering, the Dot Counting Test, the [~~Wechsler Memory Scale III~~] (WMS-III), and the Wechsler Memory Scale IV (WMS-IV).

updated/revised assessment tools within a year of their publication and must interpret them within acceptable professional guidelines [Guidelines]. If an evaluator chooses not to use the most updated/revised assessment tools, the evaluator must explain why in the evaluation report.

3. Test results and/or raw data should not be included in the evaluation report, but if the Board requests the test results and/or raw data from the evaluator, the evaluator must provide the requested results to the Board's designated expert for review.
4. Evaluator notes should not be included in the evaluation report, but if the Board requests a copy of the evaluator's notes, the evaluator must provide a copy of the notes to the Board's designated expert for review.
5. Information relevant to the validity of the testing, including the individual's response style, must be included in the evaluation report. If results suggest defensiveness or some attempt at positive impression management, the relevance of such findings in relation to the Board's referral issue must be addressed in the evaluation report.
6. Each evaluation report must explain the evaluator's clinical opinions regarding any discrepancies between test results and information obtained in the clinical interview or through a review of the collateral records.

VI. Evaluation Report Requirements

The Board will provide an evaluator with information regarding the individual subject to the evaluation prior to the date of the evaluation. This information may include performance evaluations, medical and personnel records, witness statements, prior physical or psychological evaluations, or other relevant documentation related to the individual's fitness to practice. Should an individual wish to submit additional material to the evaluator, that material must be provided in advance to the Board for review.

An evaluator's findings must be based upon the data available to the evaluator at the time of the evaluation. If additional, relevant information is obtained after the completion of the evaluation, or if it is determined that the original evaluation was based on inaccurate information, the Board may request that the evaluator reconsider his or her conclusions in light of the additional information.

Typically, an individual will be given forty-five (45) days in which to complete an evaluation. Once an evaluation has been completed, the evaluator is required to send a copy of the written findings directly to the Board within thirty (30) days of the completion of the evaluation. The purpose of this requirement is to avoid any attempt to improperly influence or modify the results of the evaluation before the Board has been provided the original copy of the evaluation. Any evaluation that has been modified after its original completion will not be considered by the Board until it is provided with the original results and an explanation by the evaluator as to the basis of any subsequent amendment or modification.

Additionally, an evaluation report must meet the following requirements:

1. The evaluation report should specify how many times an individual was seen and

how long each of the appointments were. An evaluator must spend a minimum of 1.5 hours in a clinical interview with the individual. The evaluation report should identify how long an individual's testing took and how long the evaluator spent with the individual in the clinical interview.

2. All discrepancies in an individual's self report and collateral information must be explored and adequately addressed by the evaluator. While the evaluator may not be able to offer a definitive opinion as to the veracity of the individual's self report, an acknowledgment of the discrepancies, including the individual's explanation about them, must be provided in the evaluation report.
3. Reasonable attempts should be made by the evaluator to communicate with health care professionals the individual has had a prior professional relationship with when relevant to the assessment of the individual.
4. All reports should address any prior diagnoses. If an evaluator detects diagnoses, the evaluator's conclusion must be supported by symptomology and within context of the referral.
5. All opinions relating to an individual's risk for a given behavior must be supported by empirically based risk and/or protective factors.
6. All collateral records provided to the evaluator must be adequately reviewed and discussed in the evaluation report.

Evaluations During COVID-19 Pandemic

If assessment or testing is conducted under physical distancing constraints due to the COVID-19 pandemic, including the use of telehealth or virtual platforms, the evaluator must make all reasonable efforts to maintain the integrity and security of all test materials and other assessment techniques consistent with the applicable regulatory rules and ethical principles applicable to the evaluator's field of expertise and in accordance with the guidelines and procedures for test use and security provided by the test developers and publishers. Further, an evaluator must disclose the process of the evaluation and the environment in which the individual was administered the testing and was interviewed as part of the final evaluation report submitted to the Board. Evaluations conducted without adequate security protocols in place may be rejected by the Board.

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