

Position Paper in Support of Remote Forensic Family Court Evaluations

The impact of the COVID-19 pandemic on the child custody community has been astounding. Almost immediately after the World Health Organization identified the pandemic, provision of in-person mental health services was discouraged as possibly unsafe both to the mental health provider and to the consumers of services. These safety concerns applied to forensic family court evaluations (FFCE). Family courts have had to confront questions about the merits of remote evaluations during a time when in-person evaluations were not possible. While the capability of providing behavioral health services via videoconferencing and other telehealth technologies has been extended to virtually all clinical aspects of behavioral and mental health practice, utilizing these technologies has not been a serious topic prior to the COVID-19 pandemic. Until now.

Currently and into the foreseeable future, psychological and forensic evaluations such as FFCEs, if they are to be done at all, must be done via remote video technology. We join the NJPA Psychologists for Promotion of Child Welfare Work Group (PPCW) and the New Jersey Department of Children and Families in supporting the use of remote video technology to conduct necessary psychological and forensic evaluations – in this case, FFCEs.

In a Position Paper published April 20, 2020, NJPA PPCW outlined the rationale for use of remote video technology in psychological and forensic evaluations, a rationale that we view must be appropriately extended to FFCEs. Video conference-mediated telemental health has become an accepted practice used in a broad array of conditions, clinical populations, and settings. These include assessment and therapy with adults and children across a broad array of conditions and clinical populations, neuropsychological assessment, and forensic assessments in civil competence, competence to stand trial, and adult and juvenile corrections settings. Although there are limitations and persons or situations where telemental health may be contraindicated as something that cannot be safely done, the general consensus is those receiving remotely delivered at mental health service delivery are often highly satisfied (Goldstein & Glueck, 2016; Myers et al., 2008) and have equivalent outcomes when compared with in person assessments and therapy interventions (Grady et al., 2013). We concur with the NJPA statement that, “The ability to conduct such evaluations remotely offers a reasonable opportunity to conduct . . . important evaluations during this public health crisis.”

While in-person evaluation remains the preferred “standard,” many professional fields are using video conference-mediated telehealth for evaluation, treatment, and consultation. Indeed, the professions of psychiatry, psychology, social work, and professional counselors have outlined best practices and ethical principles for using telemental health. When evaluators conducting remote-FFCEs follow established best practices from the child custody evaluation community AND the established best practices within the telemental health community, their work product should be viewed as valid, reliable, and trustworthy in court.

The acceptance of use of this technology in clinical practice, as shown by numerous professional theory and evidence-informed best practice guidelines, is undeniable. For psychiatrists, the American Psychiatric Association has recognized videoconferencing as a legitimate service delivery mechanism since 1998 and, in 2018, together with the American

Telemedicine Association, promulgated a statement, *Best Practices in Videoconferencing-Based Telemental Health* (Shore et al., 2018). The American Academy of Child and Adolescent Psychiatry introduced its' guidelines, *Practice Parameter for Telepsychiatry With Children and Adolescents*, in 2008. For psychologists, the APA issued *Guidelines for the Practice of Telepsychology* in 2013 (APA, 2013). For social workers, a group of professional organizations (National Association of Social Workers (NASW), Association of Social Work Boards (ASWB), Council on Social Work Education (CSWE), and Clinical Social Work Association (CSWA) created the *Standards for Technology in Social Work Practice* in 2017. The American Counseling Association's Code of Ethics also addresses distance counseling (ACA, 2004).

This perspective recognizes that both custody evaluators and telemental health practitioners base their processes on similar scientific principles and procedures, which include adapting their protocols and techniques to the populations they serve and the demands of the context within which services are delivered. These similarities include, but are certainly not limited to, designing the assessment or therapeutic frame, establishing rapport sufficient for the mental health task – be it assessment or therapy, and objectively collecting the data and information necessary to address either clinical problems or psycholegal questions. There is a long history of clinical methods informing forensic assessments generally and child custody evaluations specifically. Almost all of the current FFCE best practices reflect integration of methods first developed in clinical practice that became accepted into this specific forensic context. Given this rich history, turning to procedures and research developed in the clinical communities is a natural way of finding methods to manage the unique demands and needs created by the current crisis.

Remotely conducting FFCEs does not change the ethical responsibilities of evaluators or their obligations to ensure the safety of those being evaluated. Telemental health service delivery does have clinical and practical limitations. Characteristics of specific individuals or situations may contraindicate safe or effective use of the technology. Special caution should be exercised in cases involving allegations of child abuse, domestic or intimate partner violence, aggressive outbursts, suicidality, and a host of other aggressive or violent behaviors that may threaten the safety of the participants. In these and other unhealthy circumstances, the telehealth best practice guidelines regarding preparation for interviews and contingency planning for potentially unsafe situations should be carefully followed, as should practices regarding privacy and data security.

One group of family court evaluators has argued against using virtual technologies such as videoconferencing as part of the solution to this dilemma. This group's proposal argues against remote FFCEs, particularly totally virtual evaluations, and asserts that evaluators using these virtual technologies cannot successfully claim to meet the threshold of reasonable degree of psychological certainty. Within this view, which they claim rests on research and collective opinion, there are claims that the limitations of remote assessment undermine the reliability and validity of results in ways that would force stakeholders to choose between making decisions based on faulty and uncertain data, or rejecting an evaluation that may not meet the reasonable degree of psychological probability threshold. After concluding that the role of virtual assessment and technology in FFCEs is a "when not if" proposition that needs to be studied prospectively and thoughtfully, and not as a concession to the present urgency, the authors of this

proposal assert they cannot undertake FFCEs using wholly remote-virtual methods. No specific solution is offered, leaving one to question whether the group wants to wait until there are solutions to the problems associated with the pandemic or until research can be conducted on use of remote technologies in FFCEs. Neither of these possibilities is certain. Nor is either of these possibilities imminent.

We respectfully disagree with this group's proposal for a moratorium on totally virtual FFCEs. Mental health professionals who undertake FFCEs understand that it is their responsibility to properly qualify the generalizability or limitations to their findings, conclusions, and recommendations, and reliance upon remote technology does not change this. Like the NJPA PPCW group who rejected indefinitely delaying evaluations in child protection cases because it ignored "the need to accurately, efficiently, and expeditiously assess parents or other family members," FFCE evaluators competent in custody forensics AND telemental health can adapt their protocols in ways that address the facts, factors, and questions that help courts resolve custody disputes without further indeterminate delays.

References

- American Counseling Association. (2014) *ACA code of ethics*.
<http://www.counseling.org/Resources/aca-code-of-ethics.pdf>
- American Psychological Association, (2013). *Guidelines for the practice of telepsychology*. *American Psychologist*, 68(9), 791-800. <https://doi.10.1037/a0035001>
- Goldstein, F. & Glueck, D. (2016). Developing rapport and therapeutic alliance during telemental health sessions with children and adolescents. *Journal of Child and Adolescent Psychopharmacology*, 26(3), 201-211. <https://doi.org/10.1089/cap.2015.0022>
- Grady, B., Myers, K. M., Nelson, E.-L., Belz, N., Bennett, L., Carnahan, L., Decker, V.B., Holden, D., Perry, G., Rosenthal, L., Rowe, N., Spaulding, R., Turvey, C.L., White, R., & Voyles, D. (2011). Evidence-based practice for telemental health. *Telemedicine and e-Health*, 17(2), 131-148. <https://doi.org/10.1089/tmj.2010.0158>
- Myers, K., Cain, S., & Work Group on Quality Issues. (2008). Practice parameter for telepsychiatry with children and adolescents. *Journal of American Academy of Child & Adolescent Psychiatry*, 47(12), 1468-1483.
<https://doi.org/10.1097/CHI.0b013e31818b4e13>
- Myers, K., Nelson, E.L., Rabinowitz, T., Hilty, D., Baker, D., Barnwell, S.S., Boyce, G., Bufka, L.F., Cain, S., Chui, L., Comer, J.S., Cradock, C., Goldstein, F., Johnston, B., Krupinski, E., Lo, K., Luxton, D.D., McSwain, S.D., McWilliams, J., North, S., Ostrowski, J., Pignatiello, A., Roth, D., Shore, J., Turvey, C., Varrell, J.R., Wright, S., & Bernard, J. (2017). American Telemedicine Association practice guidelines for telemental health with children and adolescents. *Telemedicine & e-Health*, 23(10), 779-804.
<https://doi.org/10.1089/tmj.2017.0177>
- National Association of Social Workers, Association of Social Work Boards, Council on Social Work Education & Clinical Social Work Association. (2017). *Standards for technology in social work practice*.
http://www.socialworkers.org/includes/newIncludes/homepage/PRA-BRO-33617.TechStandards_FINAL_POSTING.pdf

Shore, J.H., Yellowlees, P., Caudill, R., Johnston, B., Turvey, C., Mishkind, M., Krupinski, E., Myers, K., Shore, P., Kaftarian, E., & Hilty, D. (2018). Best practices in videoconferencing-based telemental health, 24(11) *Telemedicine & e-Health*, 827-832. <https://doi.10.1089/tmj.2018.0237>

Respectfully submitted,
Bud Dale, Ph. D. (ABPP), J.D.
William Frankenstein, Ph. D.
Donald Franklin, Ph. D.
Barry Katz, Ph. D.
Eileen A. Kohutis, Ph. D.
Cynthia Lischick, Ph. D., LPC, DVS
Madelyn Simring Milchman, Ph. D.
Jonathan D. Wall, Psy.D.