

Oregon Health Authority

[Health Systems Division: Behavioral Health Services - Chapter 309](#)

Division 90

FORENSIC MENTAL HEALTH EVALUATORS AND EVALUATIONS

[309-090-0000](#)

Purpose and Scope

These rules establish minimum standards for the certification of psychiatrists, licensed psychologists, and regulated social workers, who are Licensed Clinical Social Workers (LCSW), related to performing forensic examinations and evaluations as described in ORS 161.309–161.~~370~~[315](#), [161.365-370](#), ~~419C.150~~, 419C.378-419C.~~398-380~~, and 419C.[411](#), and 419C.~~524-529~~. The rules are intended to ensure that forensic evaluations meet consistent quality standards and are conducted by qualified and trained evaluators. The Oregon Health Authority shall provide training, certify qualified applicants and maintain a list of certified forensic evaluators for statewide use.

Statutory/Other Authority: ORS 413.042, ~~161.309-370~~, 161.392 & 419C.~~378-382~~[4382](#)

Statutes/Other Implemented: ORS 161.~~309295-325-370~~, [161.360-370](#), 161.392, & 419C.378 -~~384~~[386](#), [419C.411](#), [419C.520-529](#)

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0005](#)

Definitions

[\(1\) “Acuity of symptoms” means the intensity and severity of the defendant’s or youth’s psychiatric symptoms.](#)

~~(1)~~ [\(2\) “Authority” means the Oregon Health Authority \(OHA\).](#)

[\(3\) “Capacity” means that the defendant or youth is able to:](#)

[\(a\) Understand the nature of the proceedings against the defendant or youth;](#)

[\(b\) Assist and cooperate with the counsel of the defendant or youth; and](#)

[\(c\) Participate in the defense of the defendant or youth.](#)

~~(42)~~ “Competence” or “competency” means the same as “fitness to proceed” and is defined according to ~~ORS 161.360~~capacity.

~~(35)~~ “Conditional Certification” means a psychologist, psychiatrist, or ~~regulated social worker who is a Licensed Clinical Social Worker~~LCSW evaluator who has not been certified by the Authority under these rules but who has received a temporary conditional certification by a court to perform a forensic evaluation in a specific criminal or delinquency case. ~~is temporarily Court-designated as a certified evaluator as defined in OAR 309-090-0010(3).~~

~~(6)~~ “Court” means a criminal court or juvenile court in this state with jurisdiction over the defendant or youth.

~~(74)~~ “Criminal Responsibility” means:

~~(a)~~ A defendant who, as a result of a qualifying mental disorder at the time of engaging in the alleged criminal conduct, lacks the substantial capacity to either appreciate the criminality of their conduct or to conform their conduct to the requirements of law; or

~~(b)~~ A youth who, as a result of a qualifying mental disorder at the time the youth committed the act alleged in the petition, lacked the substantial capacity to either appreciate the nature and quality of the act or to conform the youth’s conduct to the requirements of law. ~~is defined according to ORS 161.295.~~

~~(8)~~ “Dangerous” or “Dangerousness” means a substantial likelihood that physical harm will be inflicted by an individual upon his own person or upon another individual, or that physical harm will occur to an individual from their inability to care for themselves. An assessment of dangerousness may take into account threats, including verbal threats or attempts to commit suicide or inflict physical harm on him or herself, or may include information about historical patterns of behavior as those patterns relate to the current risk of harm; or behavior which has caused physical harm or which would place a reasonable person in reasonable fear of sustaining physical harm. The fact that an individual was charged with a crime or diagnosed with a mental illness is not alone sufficient to establish an individual’s dangerousness.

~~(9)~~ “Defendant” means a person who is tried as an adult in a court of criminal jurisdiction.

~~(10)~~ “Delinquency case” means any case involving a person who is under 18 years of age and who has committed an act that is a violation, or that if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city; and who is under the jurisdiction of the juvenile court.

~~(511)~~ “Division” means the Health Systems Division of the Authority.

(~~6~~12) “Evaluator” means a psychiatrist, licensed psychologist or a ~~licensed licensed Clinical clinical Social social Worker worker~~ LCSW who is currently certified by the Authority under these rules to perform forensic evaluations in the State of Oregon.

(13) “Fit to Proceed” or “Fitness to Proceed” means the same as having capacity.

(~~7~~14) “Forensic ~~Psychiatric or Psychological~~ Evaluation” means that an evaluator assesses the defendant’s or youth’s fitness to proceed or criminal responsibility, completes a written evaluation, and submits it to the court or attorneys in a criminal or delinquency case. the assessment of a defendant or juvenile in which the certified forensic evaluator opines on a specific psycho-legal referral question related to ORS 161.360 or 161.295, or 419C.378-419C.398 and is ordered by the Court or requested by associated attorneys.

(~~8~~15) “Full Certification” means a psychiatrist, ~~or~~ licensed psychologist, or LCSW is certified by the Authority to perform forensic evaluations under these rules for the duration of 24 months in the State of Oregon satisfying the requirements of this chapter as defined in OAR 309-090-0010(1).

(16) “Guilty Except for Insanity” means that a Court ~~determines~~ has determined that a defendant lacks criminal responsibility.

(17) “Hospital level of care” means inpatient psychiatric assessment or stabilization in a secure, locked institution with seven days per week, 24-hour supervision by registered nurse staffing and a 24-hour, onsite psychiatrist available to address behavioral emergencies and approve involuntary psychiatric medication, emergency medication, seclusion, restraint, or other interventions.

(18) “Incapacitated” or “incapable” means that ~~ae~~ defendant or youth is unable, as a result of a qualifying mental disorder, to:

(a) Understand the nature of the proceedings against the defendant or youth;

(b) Assist and cooperate with the counsel of the defendant or youth; or

(c) Participate in the defense of the defendant or youth.

(d) A youth cannot be found “incapacitated” solely because:

(i) Of the age of the youth;

(ii) Of the current inability of the youth to remember the acts alleged in the petition; or

(iii) Evidence exists that the youth committed the acts alleged in the petition while the youth was under the influence of intoxicants or medication.

(919) "Juvenile" means ~~an individual under the age of 18~~ the same as a youth.

(1020) "Juvenile Certification" means an evaluator who has been certified by the Authority under these rules to complete forensic evaluations of youths related to their fitness to proceed and criminal responsibility, or related only to their fitness to proceed in the case of LCSWs in the state of Oregon satisfies the requirements of this chapter as defined in OAR 309-090-0010(1) and has also completed the specialized juvenile segment of the Oregon Forensic Evaluator Training and has successfully passed the examination for juvenile certification.

(1121) "Licensed Clinical Social Worker (LCSW)" means a regulated social worker licensed with the Oregon ~~B~~board of Licensed Social Workers pursuant to ORS 675.530.

(1222) "Licensed Psychologist" means a psychologist licensed pursuant to ORS 675.010 through 675.150 by the Oregon Board of Psychologist Examiners.

(13) "Mental Defect" means ~~intellectual disability, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5); of the American Psychiatric Association.~~

(14) "Mental Disease" means ~~any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the current Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5); of the American Psychiatric Association.~~

(a) ~~The term "mental disease or defect" as defined in these rules does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct, abnormalities manifested solely by substance induced disorders, or an abnormality consisting solely of paraphilias;~~

(b) ~~For offenses committed on or after January 1, 1984, the term "mental disease or defect" does not include any abnormality constituting solely a personality disorder.~~

(1523) "Oregon Forensic Evaluator Training Program" means a training program, ~~to review with~~ approved by the Authority, to review with ~~for~~ psychiatrists, licensed psychologists, and Licensed Clinical Social Workers ~~LCSWs related to the best practices and requirements for forensic evaluations and the standards required in these rules to perform forensic evaluations for courts in the state of Oregon performed under these rules.~~

(1624) "Psychiatrist" means a physician licensed by the Oregon Medical Board pursuant to ORS 677.010 through 677.450 and who has completed an approved residency training program in psychiatry.

(25) "Qualifying Mental Disorder" (formerly "Mental disease or defect") means:

(a) A developmental or intellectual disability, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of ~~the defendant's or youth's~~ functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association; or

(b) Any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of ~~the defendant's or youth's~~ functioning and is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association.

(c) "Qualifying Mental Disorder" ~~does not include:~~

(A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to ~~transitory, episodic alcohol or drug-induced psychosis;~~

(B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct;

(C) An abnormality constituting a personality disorder; or

(D) Constituting solely a conduct disorder for a youth.

(~~1726~~) "Redacted Forensic Evaluation" means a forensic evaluation report for which all identifying information of the client and evaluator has been removed. Specific information that should be redacted includes any information which may specifically identify the defendant or ~~juvenileyouth~~, name and discipline of the evaluator, address, phone, fax or logos that may identify the evaluator, qualifications of the evaluator that may identify the evaluator.

(~~1827~~) "Regulated Social Worker" means ~~a baccalaureate social worker registered under ORS 675.532, a master's social worker licensed under ORS 675.533, a clinical social work associate certified under ORS 675.537 or a clinical social worker licensed under ORS 675.530.~~a social worker registered pursuant to ORS 675.510.

(~~19~~) "Substantial Danger to Self or to Others" means the individual requires a hospital level of care due to a mental disease or defect.

(28) "Responsible Except for Insanity" means that a Court ~~has determined~~ that a youth lacks criminal responsibility.

(29) "Serious mental condition" means ~~the youth's mental condition~~ requires supervision and treatment services for the safety of others and is:

(a) A mental illness of major depression;

[\(b\) A mental illness of bipolar disorder; or](#)

[\(c\) A mental illness of psychotic disorder.](#)

[\(2030\)](#) “Successful completion of training” means:

(a) Attendance at the entire [Oregon Forensic Evaluator Training Program](#)~~training~~; and

(b) Passing the examination given at the conclusion of the training.

[\(2131\)](#) “Temporary Certification” means [a psychiatrist, licensed psychologist, or LCSW is temporarily certified by the Authority to perform forensic evaluations as permitted under these rules for the duration of 12 months, with a possible extension of an additional three months. Temporary Certification allows the evaluator time the certification granted by the Authority under these rules to complete their Forensic Evaluator Training and/or to submit their required redacted forensic evaluation reports to the Authority for Full Certification.](#)~~after an applicants has satisfied the requirements of OAR 309-090-0010(2).~~

[\(32\)](#) “Treatment team” means [the clinical staff currently providing active psychiatric or psychological treatment to the patient/defendant or youth, including but not limited to an attending psychiatrist, psychiatric mental health nurse practitioner, registered nurse, psychologist, social worker, mental health therapist, or treatment care plan specialist.](#)

[\(2248\)](#) “Youth” means an individual [who is](#) under 18 years of age [and](#) who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county, or city; [and who is under the exclusive original jurisdiction of,](#) ~~pursuant to ORS 419A.004.~~[the juvenile court.](#)

Statutory/Other Authority: ~~ORS 161.398-392, & 419C.524, 419C.382, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~[ORS 161.309-370 & 419C.378-398](#)

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MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 16-2012, f. & cert. ef. 12-26-12

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0010](#)

Forensic Certification Types and Requirements

In order to submit an evaluation to the Court regarding a defendant's or youth's competency or criminal responsibility, the evaluator must be certified by the Authority under these rules.

~~Psychiatrists licensed psychologists, and Licensed Clinical Social Workers must be certified by the Authority to submit evaluation reports to the court for the purpose of criminal responsibility or competency when ordered by the court as required in ORS 161.309, 161.365, 419C.524 through 419C.527 and 419C.378 through 419C.398.~~

(1) ~~Applicants~~ s must meet the following requirements for ~~F~~ull ~~C~~ertification:

(a) A psychiatrist must submit a completed application form, psychiatrist supplement, and nonrefundable \$250 application fee and;

(A) Have a current license to practice in Oregon;

(B) Participate in and successfully complete the Oregon Forensic Evaluator Training; and, if the evaluator desires to perform juvenile forensic evaluations, also successfully complete the specialized juvenile segment of the Oregon Forensic Evaluator Training; and

(C) Submit to the Authority for review three redacted forensic evaluation reports completed by the applicant within the previous 24 months.

(i) If an applicant desires to perform criminal responsibility forensic evaluations, the applicant must submit if available, at least one redacted ~~forensic evaluation report should be an evaluation of~~ criminal responsibility forensic evaluation, if available.

(ii) If an applicant desires to perform juvenile forensic evaluations, the applicant ~~shall must participate in and successfully complete the specialized juvenile segment of the Oregon Forensic Evaluator Training, and, if available, submit~~ at least one redacted forensic evaluation report ~~should be an evaluation of a~~ juvenile youth, if available.

(b) A licensed psychologist must submit a completed application form, psychologist supplement and nonrefundable \$250 application fee and:

(A) Have a current license to practice in Oregon;

(B) Participate in and successfully complete the Oregon Forensic Evaluator Training; and, if the evaluator desires to perform juvenile forensic evaluations, also successfully complete the specialized juvenile segment of the Oregon Forensic Evaluator Training; and

(C) Submit to the Authority for review three redacted forensic evaluation reports completed by the applicant within the previous 24 months.

(i) If an applicant desires to perform criminal responsibility forensic evaluations, the applicant must submit if available, at least one redacted ~~forensic evaluation report should be an evaluation of~~ criminal responsibility forensic evaluation, if available,

(ii) If an applicant desires to perform juvenile forensic evaluations, the applicant ~~shall must participate in and successfully complete the specialized juvenile segment of the Oregon Forensic Evaluator training and, if available, submit~~ at least one redacted forensic evaluation report ~~should be an evaluation of a juvenile youth, if available.~~

(c) A ~~Licensed Clinical Social Worker~~ LCSW must submit a completed application form, social worker supplement, and nonrefundable \$250 application fee and;

(A) Have a current Oregon license as a clinical social worker as defined in ORS 675.530;

(B) Participate in and successfully complete the Oregon Forensic Evaluator Training including the specialized juvenile segment; and

(C) Submit to the Authority for review three redacted forensic evaluation reports, specifically addressing juvenile competency, completed by the applicant ~~specifically addressing juvenile competency completed~~ within the previous 24 months.

(d) A ~~Licensed Clinical Social Worker~~ LCSW is restricted ~~from providing to performing~~ forensic evaluations ~~except for evaluations related to specifically addressing~~ a youth's fitness to proceed in a proceeding initiated by a petition alleging jurisdiction under ORS 119C.005.

(e) Full Certification has a maximum duration of 24 months from certification date.

(2) Temporary Certification:

(a) ~~OHA may grant Temporary Certification to those applicants who submit their completed applications, supplements, fees and proof of required licenses before the applicants complete their~~ Applicants who submit applications for Forensic Evaluator Certification shall be granted a Temporary Certification until participation in and successful completion of the Oregon Forensic Evaluator Training and ~~or submission of all of their~~ fee redacted forensic evaluation reports. ~~If the applicant desires to perform criminal responsibility evaluations, at least one redacted forensic evaluation report must be an evaluation of criminal responsibility.~~ Applicants must attend the next regularly scheduled training date or request an extension which may be granted by the Authority.

(b) Evaluators with ~~temporary~~ Temporary Certification, who submit forensic evaluation reports for panel review, are certified to perform forensic evaluations ~~for on~~ individuals charged with ~~crimes any~~ offense including:

(A) Aggravated murder;

(B) Murder; or

(C) ~~Ballot Measure 11 Offenses~~ A crime listed in ORS 137.700(2).

(c) If no redacted forensic evaluation reports are available, evaluators may perform forensic evaluations of those charged with crimes, other than ~~aggravated murder, murder or Ballot Measure 11~~ offenses

listed in subsection (2)(b) of this rule, for the purpose of generating evaluation reports ~~to~~for the Authority ~~for~~to review.

(d) For Certification purposes, psychiatrists enrolled in an Accreditation Council for Graduate Medical Education (ACGME)-Accredited residency training program may participate in evaluations where certification ~~is~~would otherwise be required when they are under ORS 161.309, 161.365 and 419C.524 ~~only~~ under the direct supervision and review of a psychiatrist or psychologist that has been granted ~~F~~full ~~C~~certification under ~~these rules~~the provisions of OAR 309-090-0010.

(e) Temporary ~~C~~certification has a maximum duration of 12 months. An extension of an additional three months may be granted by the Authority at its discretion for extenuating circumstances.

(3) Conditional Certification. An evaluator, who has not been certified by the Authority, may be granted conditional certification by ~~the a court, if in a particular criminal or delinquency case for~~ exigent circumstances, such as but not limited to ~~-exist such as~~ an out of state expert evaluation being sought, or an unusual expertise ~~is being~~ required. The evaluator court shall will notify the provide a copy of the court order granting them conditional certification to the Authority within 14 calendar days of that order of the granting of a conditional certification. Conditional ~~Certification~~ certification is limited to that specific criminal or delinquency matter and ends at the disposition of ~~the that~~ particular ~~case for which the conditional certification was granted, and~~ case and the conditional certification is limited to that specific criminal or delinquency matter.

Statutory/Other Authority: ORS 413.042, 161.392 & 413.042, 419C.524, 161.309-370 & 419C.382

Statutes/Other Implemented: ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529 ~~ORS 161.309-370, 161.392, 419C.382 & 419C.380~~

History:

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MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-090-0015

Application Requirements and Process

(1) Applications must be submitted to the Authority using a form and in a manner prescribed by the Authority.

(2) The application must be accompanied by:

(a) Proof of ~~the applicable license by the State of Oregon, as a Psychiatrist Psychologist, or Licensed Clinical Social Worker~~ the applicant's current license permitting them to practice as a psychiatrist, licensed psychologist or LCSW in the State of Oregon.

(b) A copy of a current resume or curriculum vitae providing documentation of forensic training and experience.

(c) Three redacted forensic evaluation reports of competency or criminal responsibility. If no redacted forensic evaluation reports are available, an applicant may be temporarily certified and may perform evaluations of those charged with crimes other than aggravated murder, murder, or [Ballot Measure 11a crime listed in crime listed in ORS 137.700\(2\)-offenses](#) for the purpose of generating reports ~~to~~for the Authority for review; and;

(d) A non-refundable application fee of \$250.00.

(3) After a complete application packet is received the Authority shall:

(a) Evaluate the materials to determine whether the applicant is qualified for Full or Temporary Certification;

(b) Grant, deny or place conditions on a certification; and

(c) Issue a written statement to the applicant of its determination.

Statutory/Other Authority: ORS [413.042](#), 161.392- ~~419C.524,&~~ 419C.392, ~~161.309-370 & 419C.378-384~~

Statutes/Other Implemented: [ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529](#)~~ORS 161.309-370, 161.392 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0020](#)

Recertification Requirements

(1) An evaluator must request recertification using ~~a~~the forms, and in a manner prescribed by the Authority.

(2) The minimum requirements for recertification are:

(a) Proof of [the applicant's license permitting them to practice as a psychiatrist, licensed psychologist or LCSW](#) ~~the applicable license in~~ by the State of Oregon;

(b) Within six months ~~prior to the~~ expiration of [the evaluator's](#) certification, [the evaluator must](#) participate in ~~a~~the Recertification ~~updates~~Updates to the Oregon Forensic Evaluator Training Program approved by the Authority;

(c) Review and approval by the Division of a minimum of two redacted forensic evaluation reports completed by the applicant during the past 24 months;

(i) If the psychiatrist or licensed psychologist applicant desires to perform criminal responsibility forensic evaluations, at least one redacted sample should be an evaluation of criminal responsibility. If performing juvenile forensic evaluations one of these should be a juvenile competency or criminal responsibility evaluation. ~~Licensed Clinical Social Workers LCSWs~~ cannot perform any forensic evaluations other than fitness to proceed evaluations for youth in a proceeding initiated by a petition alleging jurisdiction under ORS 419C.005.

(ii) All redacted evaluation reports submitted by ~~Licensed Clinical Social Workers LCSWs~~ for panel review must specifically address the topic of juvenile competency for youths in a proceeding initiated by a petition alleging jurisdiction under 419C.005.

(iii) These reports shall be subject to review and must meet or exceed standards identified by the Authority as listed in OAR 309-090-0025. The review panel may request to review an additional evaluation report if necessary to make a determination that the reports meet or exceed standards as listed in 309-090-0025; and

(d) A non-refundable application fee of \$250.00; and

(e) Continued compliance with all applicable laws and requirements.

(3) Failure to satisfy the factors listed in section (2) above shall result in a non-recertification order from the Authority.

(4) Failure to reapply, attend the Recertification Updates to the Oregon Forensic Evaluator Training, or submit redacted evaluation reports for review and approval shall constitute a forfeiture of Full Certification which may be restored only upon written application approved by the Authority. Individuals who fail to reapply may receive a Temporary Certification for up to twelve months. Evaluators are responsible for monitoring their own expiration date and reapplying at the appropriate time.

(5) Individuals who receive non-recertification orders may reapply for certification and will be certified after they meet all of the requirements for certification. The Authority shall also provide notice of the applicant's right to a hearing pursuant to the provisions of ORS Chapter 183.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~ ~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~ ~~161.309-370 & 419C.378-384~~

History:

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MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-090-0025

Content of Written Evaluations Assessing Competency and Criminal Responsibility

(1) At minimum each forensic evaluation report shall include the following:

(a) Identifying information of the defendant or youth, a description of the forensic examination, criminal charges, the referral source and the referral question;

(b) The evaluative procedure, techniques and tests used in the examination and the purpose for each, informed consent and limits of confidentiality;

(c) Background information, relevant history of mental and physical illnesses, substance use and treatment histories, medications, hospital or jail course, and current setting.

(d) Summary of a mental status examination;

(e) A substantiated diagnosis in the terminology of the American Psychiatric Association's current ~~edition of the~~ Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association;

(f) Address the possibility ~~consideration~~ of malingering ~~must be present~~ in every evaluation report; and

(g) A summary of relevant records reviewed for the evaluation.

(2) ~~In addition to OAR 309-090-0025(1), when the defendant or juvenile's~~ In a ~~competency~~ fitness to proceed forensic evaluation is in question, the the evaluation report evaluator shall also include, at a minimum, opinions and explanations related to the defendant's or juvenile youth's:

(a) Understanding of his or her charges, the possible verdicts and the possible penalties;

(b) Understanding of the trial participants and the trial process;

(c) Ability to assist counsel in preparing and implementing a defense; and

(d) Ability to make relevant decisions autonomously; ~~and~~

~~(e3) In a fitness to proceed forensic evaluation under ORS 161.365, the evaluator shall also include f determined incapacitated: A recommendation of treatment and other services necessary for the defendant to gain or restore capacity, including~~ an opinion and explanation as to whether the person defendant requires a hospital level of care due to their dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder. In all other evaluations, the evaluator shall not opine on the defendant's or youth's need for hospital level of care due to their dangerousness and the acuity of

symptoms of their qualifying mental disorder, unless the community mental health program or a treatment provider is not able to make that determination.

~~(#4)~~ In a fitness to proceed forensic evaluation, the evaluator shall:

(i.) Include a recommendation of treatment and other services necessary for the defendant to gain or restore capacity; and

(ii) Not include ~~The evaluator may not provide~~ the defendant's or ~~juvenileyouth~~'s statements about the alleged criminal conduct unless necessary to support the evaluator's finding of competence or incompetence.

~~(#5)~~ In addition to OAR 309-090-0025(1), related to the question of criminal responsibility forensic evaluations, the evaluator shall include in their report the evaluation report shall also include, at a minimum, opinions and explanations addressing:

(a) The defendant's or ~~juvenileyouth~~'s account of the alleged offense including thoughts, feelings and behavior;

(b) Summary of relevant records; including police reports,

(c) An expert opinion regarding the role of substance use in the alleged offense;

(d) The defendant's or ~~juvenileyouth~~'s mental state at the time of the alleged offense; and

(e) An expert opinion regarding whether the defendant, as a result of qualifying mental disorder ~~disorder, disease or defect at the time of engaging in the alleged criminal conduct, lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law~~ lacks disorder ~~lacks criminal responsibility.~~

~~(f) An expert opinion regarding: if the individual is determined guilty except for insanity of a misdemeanor is the individual a substantial danger to others as defined in these rules.~~

Statutory/Other Authority: ORS 413.042, 161.392 & 419C.382 ~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 419C.382 & 161.309-370~~

Statutes/Other Implemented: ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529 ~~ORS 161.309-370~~

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MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0030](#)

Forensic Evaluation Review Panel

- (1) A multi-disciplinary review panel shall be appointed by the director of the Division and serve at the discretion of the Director to review forensic evaluation reports submitted in support of applications for certification.
- (2) An individual interested in participating in the Forensic Evaluation Review Panel shall submit a letter of interest and resume to the Director of the Division.
- (3) Members shall be experienced in the criminal justice system and have familiarity with the issues of competency and criminal responsibility.
- (4) Members shall serve a two year term and are eligible for reappointment at the discretion of the Director. Vacancies occurring during a member's term shall be filled immediately for the remainder of the unexpired term.
- (5) Members shall be reimbursed on a per diem basis for each day during which the member is engaged in the performance of official duties.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~ ~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~ ~~ORS 161.309-370, 419C.378-384, 161.392 & 419C.382~~

History:

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MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0035](#)

Forensic Evaluation Review Panel Process

- (1) Members of the Forensic Evaluation Review Panel shall meet at the discretion of the Authority to review all submitted redacted forensic evaluation reports as the need arises.
- (2) Redacted forensic evaluation reports shall be reviewed by panel members with different professional backgrounds to determine whether the reports have met the requirements of form and content.
- (3) Panel members shall issue a report to the Division with feedback for the certified forensic evaluator.
- (4) The Review Panel shall participate in the process for reviewing complaints and remediation plans under OAR 309-090-0060 through 309-090-0062 and make recommendations to the Authority if requested.

Statutory/Other Authority: ORS 413.042, 161.392 & 419C.382~~ORS 161.309-161.370, 161.392, 419C.524, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529~~ORS 161.392, 161.309-370, 413.042 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-090-0040

Forensic Evaluator Training Program

(1) The Authority will establish a course of training for persons desiring the issuance of a certificate. At a minimum the training will include a review of:

(a) The Oregon statutes and case law applicable to the issues of competency and criminal responsibility;

(b) Testing and techniques related to assessing competency and criminal responsibility;

(c) The required contents of a report;

(d) The ethical standards and considerations relevant to an evaluation of competency and criminal responsibility;

(e) Assessment of risk to others and recommendations for treatment and services.

(2) Additional specialized training shall be required for evaluators desiring to perform evaluations on children younger than age 15 and other specialized populations.

(3) An examination will be administered at the completion of the initial training.

(4) Updates to this training shall be provided every two years and consist of information regarding relevant changes to the law, rules, process for Forensic Evaluator Certification, and relevant advanced topics.

Statutory/Other Authority: ORS 413.042, 161.392 & 419C.382~~ORS 161.309-161.370, 161.392, 419C.524, 419C.382, HB 2836 & 419C.382~~

Statutes/Other Implemented: ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529~~HB 2836, ORS 161.309, 161.325 - 329 & 419C.382~~

History:

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

MHS 12-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

[309-090-0050](#)

Confidentiality

Except for the names of certified evaluators, all records provided to the Authority or the Division under these rules are confidential and privileged and may not be released or utilized for any purpose outside these rules. Any practitioner who in good faith complies with these rules, including providing sample evaluations for review in order to maintain certification, is not responsible for any failure by another individual or agency to maintain confidentiality, in regard to these rules.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~ ~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 419C.382 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529~~ ~~ORS 161.309-370 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

MHS 13-2012, f. & cert. ef. 6-25-12

[309-090-0055](#)

Certification Denial, Suspension, Revocation, Non-Recertification and Complaints Regarding Content of Written Evaluation Reports

(1) An applicant may be denied certification, or an evaluator may be denied recertification for reasons including but not limited to:

(a) The applicant for initial or recertification attempted to procure a certification through fraud, misrepresentation or deceit;

(b) The applicant for initial or recertification submits to the Authority any notice, statement or other document required for certification which is false or untrue, or contains any material misstatement or omission of fact;

(c) The applicant for initial or recertification has been convicted of a felony; or

(d) The applicant for initial or recertification fails to meet the requirements for receiving certification or recertification.

(2) An applicant's certification may be revoked for any of the following reasons:

(a) The evaluator fails to meet any of the applicable requirements of these rules;

(b) The applicant loses his or her professional license for any reason;

(c) The Authority accepts one or more complaints regarding the content of written reports; the forensic review panel reviews the complaints and determines that the deficiencies in the reports represent a substantial departure from the standards of practice established by these rules. Complaints regarding content are limited to standards set forth in OAR 309-090-0025.

(3) The Authority may immediately suspend an evaluator's certification in the event of a situation in which the Authority determines that immediate action is necessary, such as receipt of a serious complaint which has not yet been fully reviewed by the Authority.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 419C.382 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~~~ORS 161.309-370 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

[309-090-0060](#)

Complaints on Which the Authority Can Act

(1) Any complaint regarding the content of forensic evaluation reports must be submitted in a form and manner prescribed by the Authority, and it must provide sufficient detail as to why the evaluation report is cause for a complaint.

(2) Complaints considered by the Authority must be limited to standards for content of written forensic evaluation reports as set forth in OAR 309-090-0025.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 419C.382, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~~~ORS 161.309-370 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

[309-090-0065](#)

Complaint Processing and Investigation

(1) If a complaint is accepted, reviewed by the Authority, and found to warrant consideration by the forensic evaluation review panel, the evaluation report shall be forwarded to the panel for consideration

and determination as to whether or not the deficiencies represent a substantial departure from the standards of practice established by these rules.

(2) If the Authority determines that there is substantial departure from the standards set forth in OAR 309-090-0025, the Authority in consultation with the forensic evaluation review panel shall provide written notice to the evaluator which may include recommended remediation steps provided by the review panel, denial of certification, or revocation of certification.

(3) If a remediation plan is recommended by the review panel, an evaluator shall have 30 days from the date of notice to respond with a written plan for remediation. If the Authority approves the plan y, the evaluator shall maintain Temporary Certification status for up to six months at which time the Authority shall I determine whether the issues raised have been adequately addressed.

(a) If the issues raised have been adequately addressed, the Authority shall withdraw its notice and grant or restore Full Certification.

(b) If the issues have not been adequately addressed, the Authority may proceed with denial or revocation of certification and shall provide notice of the applicant's right to appeal, pursuant to the provisions of ORS Chapter 183.

(4) If certification is denied or revoked and evaluator may request reconsideration by the Director of the Authority by submitting a written request within 15 business days of receiving notice.

(5) Individuals making complaints on issues determined to be not covered by these rules may be referred to the appropriate licensing boards.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~~~ORS 161.309-161.370, 161.392, 413.042, 419C.524, 419C.382, 161.309-370 & 419C.378-384~~

Statutes/Other Implemented: ~~ORS 161.295-325, 161.360-370, 161.392, 419C.378-386, 419C.411, 419C.520-529~~~~ORS 161.309-370 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14

[309-090-0070](#)

Contested Case Hearing

If the Authority denies, revokes, non-renews, suspends, or imposes a condition on certification, the Authority shall provide notice of the applicant's right to a hearing pursuant to the provisions of ORS Chapter 183.

Statutory/Other Authority: ~~ORS 413.042, 161.392 & 419C.382~~~~ORS 161.309-161.370, 161.392, 413.042, 419C.524 & 419C.382~~~~419C.378-384~~

Statutes/Other Implemented: ORS 161.295-325, 161.360-370, 161.392, 419C.378 -386, 419C.411, 419C.520-529~~ORS 161.309-370 & 419C.378-384~~

History:

MHS 4-2016, f. & cert. ef. 5-3-16

MHS 14-2014, f. & cert. ef. 10-29-14