

Writing Reports for Lawyers and Courts

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Psychiatrists and other mental health professionals are asked from time to time to provide reports that will be used in legal or administrative actions (“forensic” reports, expressing “opinions” beyond personal observations). This article provides general guidance and recommendations for forensic report writing, particularly when the writer has limited forensic experience. Forensic reports are quite different from ordinary clinical reports. Their appearance, purpose, context, format, vocabulary, and legal or administrative “rules” should be carefully considered by professionals who choose to write them. Conflict of interest dictates that most such reports not be written about one’s own patients. Requests from complainants or litigants themselves, rather than from lawyers, judges, or agency/company officials, should usually be declined. Although most attorneys and others who ask for reports do so in good faith, some requests, especially last-minute or “rush” demands and those from complainants or litigants themselves, can encourage misguided or even unethical behavior. Clinicians who write forensic reports should adhere to a careful routine of completeness, honesty, and objectivity. They should decline cases in which they sense inappropriate pressure or ethical problems, and treat every report as a lasting and public example of their work, expertise, and professionalism. (*Journal of Psychiatric Practice* 2011;17:355–359)

KEY WORDS: forensic reports, attorneys, litigants

Introduction

The title of this column is catchy (and it rhymes), but understanding this topic is serious business for both “forensic” mental health professionals and clinicians who are asked to communicate professional opinions that will be used in legal or administrative actions. A bad or inappropriate report can thwart justice, harm litigants, and—at best—embarrass the writer. Being a “forensic” psychiatrist doesn’t preclude a poor report. I last addressed report writing in this journal in 2002;¹ it’s time to do it again.

The reports we’ll address have legal or administrative (“forensic”) purposes, not primarily clinical ones. They are generally known as “expert reports.” That means one is expressing professional “opinions” that have special weight in the matter at hand, not merely reporting something seen or heard in person. *It is important to remember that forensic reports are not like those intended for a clinical record, physician, or professional colleague.* The purpose, implications, audience, format, and style of forensic reports are quite different from those usually written by clinicians.

Forensic reports may be intended to support or defend a lawsuit, refer to a person’s competency to do something or responsibility for his or her actions, address a person’s ability to parent or the best interests of a child, or be otherwise intended to influence a court’s decision in one way or another. Administrative purposes include, among other things, support for or defense against job promotion or termination, ability to practice a profession, or eligibility for a license or employment.

It should go without saying that professional reports must be honest and objective. They may focus on particular aspects of a case and should express the writer’s opinions articulately and persuasively, but they should not misconstrue facts, misguide the reader, or “lie by omission.”

Forensic reports are almost always written at the request of an attorney, a court, or an agency official. Be very cautious if a patient or litigant asks you for an assessment or report; one should almost always work through a lawyer, court, or other third party (such as a government agency or company).

It is rarely appropriate to write forensic reports about one’s own patients. It may be acceptable to pro-

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vide a simple disability report or certify one's patient for involuntary hospitalization, but there are a number of inherent conflicts of interest involved in combining clinical and forensic work for the same patient/evaluatee.^{2,3} I usually avoid using the term "patient" to describe the subject of a forensic report. In general, if a request from a lawyer or court, or involving a lawsuit or criminal matter, refers to your patient, you should not be the person offering opinions (although you may describe "facts" that you have personally determined or observed, such as diagnosis or behavior).*

Make Sure Your Report Is Very Professional

Think of your report as if it were a term paper on which you absolutely must earn an "A." Note that I didn't suggest using a term paper *format* (see below), or making the report particularly long or obsessively referenced. Short, concise reports are usually best (and good short ones often take more time to write than longer ones).

Be clear. Avoid clinical jargon and explain clinical terms. Your readers are ordinary folks, not clinicians. "Doctor-speak" is not only confusing, it often sounds arrogant.

Use excellent English. All physicians, psychologists, and social workers went to college, but that often seems to be where they left the things they learned in high school English. Use a dictionary, a thesaurus, and perhaps a grammar text such as *The Elements of Style* by Strunk & White (first published in 1918 and still a standard). Proofread every report carefully. If you have trouble with spelling, punctuation, grammar, or syntax, have an experienced writer proofread your reports. I'm not trying to patronize or insult you, but nothing leaves a worse taste in an educated reader's mouth, or detracts more from the content of a report, than poor English from a person who should know better.

Don't be casual with your vocabulary, especially when using legal-sounding terms. Commonly used words such as "negligent," "competent," "responsible,"

"intentional," and many others often have very specific meanings to the reader or court. "Indicates" refers to something with little doubt, while "suggests" usually implies a mere possibility or lower probability. In that vein, the very important phrase "*reasonable medical certainty*" (sometimes "psychiatric" or "psychological" certainty) *does not imply true certainty* in most jurisdictions, but is usually defined as "more likely than not."

If you're not sure how a word or phrase will be interpreted in the legal or administrative arena, ask the person who requested the report. He or she would much rather explain than be stuck with a misguided report.

As you edit and rewrite your report, be aware that written drafts and notes are likely to be "discoverable." That means, particularly in civil matters such as malpractice or personal injury cases, that you must not destroy notes or printed drafts, and must turn them over to the other side if required. It also means that if you send a draft to someone, even an attorney, you must keep a copy for discovery. ("Attorney-client privilege" does not usually apply to expert reviewers or witnesses.) Wording that is routinely typed over during the course of word processing need not be saved, in my experience. Be sure to ask the person who retained you about applicable discovery rules, so that you do not inadvertently destroy things that should be kept, and are not accused of evidence "spoliation" (a crime—and yes, that's how it's spelled).

Appearance and neatness count. Use very good stationery and professional-looking letterhead. Do not use computer-generated letterhead or copier paper. Don't email a report unless you absolutely have to; fax it and follow up with the original (sent flat, not folded). Consider using cream-colored stationery rather than white, and weight and texture that will set it apart from ordinary paper in the reader's files.

Fit the Format to the Needs of the Case and the Reader

Forensic reports usually contain most of the items listed in Table 1.

Style and format vary with the purpose of the report, jurisdiction, and request. Sometimes a particular format is required, which should be clarified with the person who retains you. Avoid unnecessary

*This article does not cover the work and relationships that precede most reports, such as being retained by an attorney to review a forensic matter.

Table 1. Common sections of forensic reports

Identifying information
Brief introduction
Brief description of methods and disclaimers
Brief narrative (optional; often omitted)
Opinions and supporting information
Sources relied upon (e.g., records reviewed)
Qualifications (brief summary; when required)
Past testimony list (attach when required)
<i>Curriculum vitae</i> (attach when required)

length and essay-style reports. It is often a good idea to ask the lawyer or other person requesting the report to provide a list of questions for you to address, then simply answer them, supporting each opinion with a paragraph or two of text. Of course, the answers and opinions must be honest and should not misconstrue situations or mislead the reader.

Keep the report concise. I once tried to read a court report, written by a very smart and well-educated colleague, that was almost 100 pages long. It was an extremely well referenced disaster. Unless the requestor has specifically asked for an exhaustive treatise, resist the temptation to write everything you know about the subject, or to discuss every pro and con of each opinion.*

Place your opinions or important findings early in the report, and perhaps set the basic opinions off with underlining or boldface type. They are the relevant part of the report. Supporting material is important, but don't make the reader wade through a lot of prose to get to the bottom line.†

Be certain of the purpose and context of your report. If necessary, ask the person who has retained you (attorney, judge, agency official) for guidance.

*Most of my forensic reports, for almost any purpose, are well under 10 pages, including opinions, brief discussion, and a list of the records reviewed.

†Some attorneys and formats suggest a brief narrative before the opinions. Make it adequate, but "brief."

Be reasonably aware of the legal context of your report and opinions. You aren't expected to be a lawyer, but it is usually important to understand the context in which the lawyer, court, or agency is asking for your help. Ask if there is a relevant statute, legal wording, case context, or agency rule that should guide the way you think about the matter.

Don't express a legal conclusion unless you know it is appropriate to do so. Your job is to express professional opinions in such a way that they can be properly considered in a legal or administrative setting. You are not the lawyer, judge, or jury. Very occasionally, a court may ask for a legal conclusion, but judges usually (and properly) reserve such decisions for themselves and/or juries (and may be miffed if the expert appears to usurp their role).

The report's purpose may dictate a format which must be followed. For example, in many jurisdictions, plaintiff's expert reports and pre-suit affidavits/reports must address each defendant's duty, alleged breach of duty, alleged damage to the plaintiff, and the alleged causal link between breach and damage. Omitting one of those can cause the suit to be dismissed (or never filed).

Expert reports in federal matters often must contain every opinion to which the expert might eventually testify; leaving one out may preclude one's testimony about that topic. Once again, ask the person who has retained you about format and items which must be included.

Include Important "Boilerplate"

"Boilerplate" is standard language repeated as a matter of routine (see examples below). The fact that it is repetitive does not imply that it is unimportant, nor that it is inaccurate.

Describe (and perhaps title) the report as "preliminary" unless it is absolutely final. It is important to leave an opportunity to change, correct, or add to one's report if additional information becomes available.

Briefly address the methods you used to arrive at your opinions. Include significant disclaimers or shortcomings in those procedures (such as not personally examining the person about whom you are expressing opinions).

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List the things on which you relied to come to your opinions. This ordinarily includes records and other materials reviewed, interviews and testing completed, consultations, and your own training and experience.

Some jurisdictions and cases require particular disclaimers or inclusions, such as a *curriculum vitae*,* your qualifications for expressing expert opinions in the case, or (in many federal matters) a list of cases in which you have testified in the past.

Case example. Here is some of the generic wording often found in my reports:

...The methods used and materials reviewed for this report are those routinely relied upon by forensic psychiatrists in matters such as this, and are based on the national standard for similar matters in forensic psychiatry. Additional information received in the future may suggest additions or changes to the preliminary opinions below; I thus reserve the right to supplement this report as necessary.

...It should be noted that I have not examined Ms. X [*who is deceased / who was not made available for examination / who refused interview / other reason*]. Although I believe the opinions expressed herein are well supported, it is possible that examination would have changed or added to some of them.

...SOURCES RELIED UPON

1. Written records and other materials as follows, represented as everything relevant and available from your office:
2. My background, training, and experience in medicine, psychiatry, and forensic psychiatry.

...QUALIFICATIONS

I am a clinical and forensic psychiatrist with training and experience in general and forensic psychiatry. I graduated from the University of Minnesota Medical School in 1970, completed psychiatry residency in 1975, and have been in continuous practice of psychiatry since that time. I am certified[†] in both general and forensic psychiatry by the American Board of Psychiatry and Neurology, and certified in administrative psychi-

atry by the American Psychiatric Association. My qualifications are further outlined in a *curriculum vitae* recently supplied to your office.

Don't Be Pushed Into a Premature or Inappropriate Report

Don't agree to write reports, or otherwise offer opinions (including amending a report at the last minute), without going through your routine procedures. Although most attorneys and others who ask for reports do so in good faith, some requests, especially last-minute or "rush" demands and those from complainants or litigants themselves, can encourage misguided, or even unethical, behavior.

Lawyers sometimes call to request "quickie" reports, often saying that deadlines are looming and their clients are about to suffer grave injustice. The schedule may not be nearly as critical as the requestor implies. Rush work is at best prone to errors, and is occasionally requested because the lawyer doesn't *want* the expert to look too closely or write too carefully. Don't accede to pressures such as "the deadline is tomorrow; just jot down your opinions on a piece of paper," or "email me your opinions and I'll put them into the format I need." If the deadline really is looming, that's the lawyer's fault, not yours. Don't be talked into a slipshod, poorly informed job, or into allowing your work to be manipulated by someone else.

"Pre-suit" reports, letters, and affidavits—the ones that are often required before a malpractice lawsuit can proceed—are especially prone to the "rush job" syndrome. Most plaintiffs' attorneys are quality, ethical folks, but some may push potential experts by saying that pre-suit letters don't require extensive review or detailed documentation, or aren't discoverable by the potential defendant (which is true in some states). A few even say things such as "I really need this in order to file my lawsuit, doc; don't worry about the details" or "no one will ever know who wrote it." That's an obvious red flag for both the lawyer's ethics and your own.

Requests from complainants or litigants themselves, rather than from their lawyers or legal representa-

*Please don't spell it "*vita*."

[†]Note that your certification makes you a "diplomate" of the ABPN or ABPP (for psychologists), not a "diplomat." (I see this error on lots of letterheads and *curricula vitae*.)

tives, should almost always be declined. Individual complainants and litigants (such as those protesting an employment matter, involved in a child custody dispute, or appealing a criminal conviction or sentence) often seek their own experts. Some are officially representing themselves in a legal or administrative setting (acting “*pro se*”). Most are simply looking for help. A few are trying to enlist experts’ help in dishonest activities, such as drug-seeking or obtaining undeserved disability payments. Sometimes they have been turned down by lawyers, or have already lost in court and hope to reopen their cases.

Although their stories are compelling at times, such people very often misunderstand or misrepresent their situations, provide inadequate information to potential experts, and/or do not understand the legal or administrative issues in their cases. Any of these issues creates difficulty for the potential expert

and his or her task, and they may encourage inappropriate, unethical, or even illegal action.

In conclusion, be careful. Stick to your routine of completeness, honesty, and objectivity. Decline cases if you sense inappropriate pressure or ethical problems. *Treat every report as a lasting and often public example of your work, expertise, and professionalism.*

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