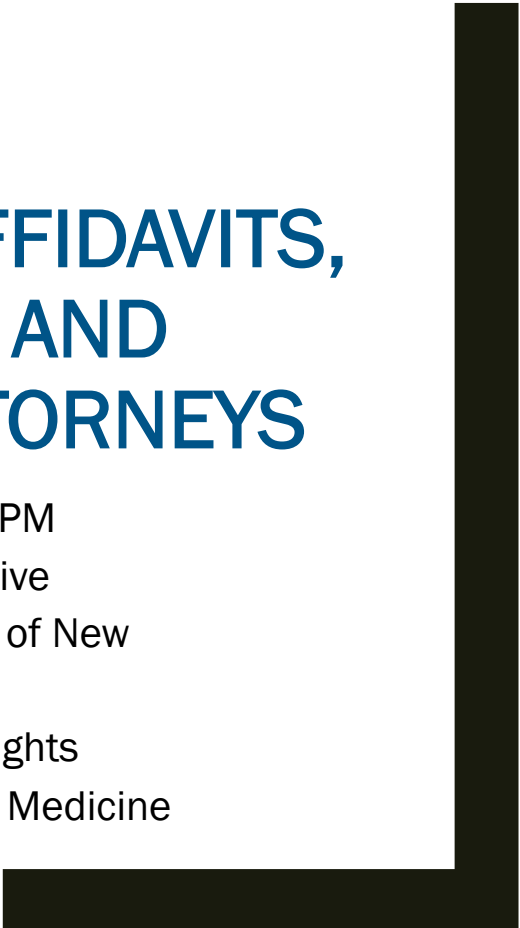




BEST PRACTICES: WRITING MEDICO-LEGAL AFFIDAVITS, TESTIFYING IN COURT, AND COLLABORATING WITH ATTORNEYS

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Presenter Disclosures

- No financial conflicts of interest
- Relevant pro bono affiliations include Phoenix Zones Initiative, Physicians for Human Rights, Society of Asylum Medicine, and University of New Mexico School of Medicine Asylum Medicine Clinic

Objectives

- Discuss components included in medicolegal documentation of forensic asylum evaluations.
- Explain principles commonly used in communicating with attorneys about forensic asylum evaluations.
- Review considerations relevant to testifying in immigration proceedings.



Limited Guidance on Asylum Evaluations

OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
Geneva



PROFESSIONAL TRAINING SERIES No. 8/Rev.1

Istanbul Protocol

*Manual on the Effective Investigation and
Documentation of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment*

1999

- Nonprofit organizations
- Peer-reviewed literature
- Gray literature
- Istanbul Protocol



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Health and Human
Rights Journal

MAY 6, 2019

Asylum Medicine: Standard and Best Practices

Hope Ferdowsian, Katherine McKenzie, and Amy Zeidan



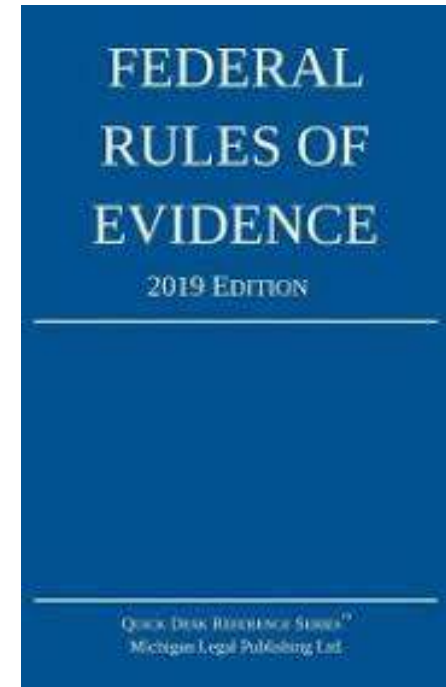
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RECOMMENDED QUALIFICATIONS AND COMPETENCIES



Qualifications and Expectations

- Purpose of Asylum Evaluation:
 - Facts pertinent to history of torture or ill treatment
 - Focused evaluation
 - Establish level of consistency across findings
- Not treatment but medicolegal documentation
- No published studies evaluating merits of certification or experience
- Legal qualification: “knowledge, skill, experience, training, or education”



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General Competencies

- Familiarity with asylum law and the role of clinicians
- Knowledge of medical and mental health consequences
- Familiarity with standardized language for describing the diagnostic probability or consistency of findings
- Skilled objective and professional approach
- Relevant history-taking and interview techniques and physical examination skills
- Medico-legal documentation skills



MEDICO-LEGAL DOCUMENTATION



Medico-legal Documentation

- 3 primary domains:
 - Background information
 - Examination findings and supplementary evidence
 - Conclusions specific to the evaluation performed
- Avoid equivocal, contradictory, or confusing language.
 - Leave out extraneous information.
 - Medical jargon accompanied by lay language
- Review the report for errors and stay objective.



Specific Components of Medico-legal Reports

- Evaluator's professional qualifications:
 - Professional affiliation(s), education, and training
 - Any other relevant experience
- Description of evaluation:
 - Informed consent documentation
 - Asylum applicant's name and descriptive information
 - Date, location, and duration of evaluation
 - Use and description of interpretation services
 - Names and descriptions of others present
 - Materials reviewed in advance



Name of attorney
Attorney office
Address
Telephone number

UNITED STATES DEPARTMENT OF ...
IMMIGRATION COURT
CITY, STATE

_____)	
In the Matters of:)	
)	File Nos.
[Name(s)])	
)	
)	
)	
)	
Type of proceedings)	
_____)	

AFFIDAVIT OF DR. [FULL NAME] IN SUPPORT OF APPLICATION FOR
POLITICAL ASYLUM FOR XX

1. I, Dr. [Full name], am an American physician licensed in [State(s)], and board certified in [medical field(s)]. I am currently employed as ... I have an academic appointment as ...
2. I completed post-graduate training in [medical field] in [month and year], at [institution and location]. I am a fellow of the American College of Physicians and the American College of Preventive Medicine.
3. I graduated with a Doctor of Medicine degree from the [institution and location], in [month and year]. I earned a [type of] degree in [major and minor] from [institution and location], in [month and year].
4. I am a volunteer for HealthRight International (formerly known as Doctors of the World) and Physicians for Human Rights. Since 2002, I have participated in specialized training in the assessment of torture sequelae under the auspices of HealthRight International and Physicians for Human Rights. I have led and participated as a presenter in training seminars for health care providers on the evaluation of survivors of torture and sexual violence. I am an expert medical consultant for Physicians for Human Rights

Program on Sexual Violence in Conflict Zones, and I have developed educational curricula for the training of medical, mental health, law enforcement, judicial, and other professionals on the forensic evaluation of child and adult sexual violence survivors. Additionally, I have developed protocols relevant to the assessment and care of sexual violence survivors, which have been adopted by healthcare organizations, national governments, and the World Health Organization. Separately, I have led and participated in novel research on the diagnosis of mental health disorders including Posttraumatic Stress Disorder and Depression.

5. On [day], [date], [year], at approximately [time], I conducted a voluntary clinical interview and physical examination of Ms. XX at [location] medical clinic, in [city and state]. I spent approximately two hours with her. I have reviewed her personal declaration on behalf of her application for asylum, and am familiar with the details she describes therein. A professional medical interpreter, using the English and XX languages, provided interpretation services.

6. The declarations and assessments I make in paragraphs 7-23 below are grounded in my personal knowledge and assessment of Ms. XX's story, gained from my interview, examination, and review of Ms. XX's application and supporting documents. I have limited my understanding of Ms. XX's narrative to those aspects of her history that are pertinent to the medical evaluation provided herein.

7. At the time of the interview and physical examination, Ms. XX was XX years old. She is originally from XX and fled to the United States to escape persecution related to her gender. She fears that if she were forced to return to XX, she would be further harmed or killed.

8. Ms. XX was subjected to female genital mutilation as a child. As an adult, Ms. XX was sold into marriage without her consent, and her husband chronically physically, sexually, and verbally abused her. She attempted to seek the help of her family and law enforcement professionals. She did not receive the necessary assistance from her family or from law enforcement professionals, in order to escape her abusive husband.

Specific Components of Medico-legal Reports (cont'd)

- Relevant history of asylum seeker:
 - Relevant past medical, surgical, family, or social history
 - Any prior trauma and treatment
- Reported account of torture or ill treatment:
 - Circumstances of arrest, detention and treatment
 - Physical or mental symptoms
 - Access to medical or psychiatric care and details



Specific Components of Medico-legal Reports (cont'd)

- Physical exam, if indicated:
 - General appearance
 - Itemized findings
 - Significant findings unrelated to torture or ill treatment
 - Inclusion of cognitive assessment or other screening or diagnostic tools, if indicated
 - Relevant behavioral observations
- Psychological or psychiatric exam, if indicated:
 - Methods of assessment
 - Findings and consistency with diagnostic criteria



Physical Exam Description

- For each scar, measure, describe, and record in text and diagram:
 - Site
 - Size
 - Shape
 - Color
 - Borders
 - Surrounding area of injury
- Relationship between observed physical characteristics and mechanism of trauma described
- Level of consistency or diagnostic probability of trauma described
- Note that there may be some unexplained findings due to:
 - Recall deficits (neurological injury, psychiatric issues, or stress)
 - Frequency or burden of injury



21. Ms. XX meets criteria for Posttraumatic Stress Disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Volume V, described below.

a. Criterion A: stressor

The person was exposed to: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence, as follows: (one required)

- 1) Direct exposure.
- 2) Witnessing, in person.
- 3) Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental.
- 4) Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.

Ms. XX was directly exposed to threatened death, actual serious injury, and indirectly exposed by learning of threatened death to her family, including a violent attack on her father.

b. Criterion B: intrusion symptoms

The traumatic event is persistently re-experienced in the following way(s): (one required)

1. Recurrent, involuntary, and intrusive memories. Note: Children older than six may express this symptom in repetitive play.
2. Traumatic nightmares. Note: Children may have frightening dreams without content related to the trauma(s).
3. Dissociative reactions (e.g., flashbacks) which may occur on a continuum from brief episodes to complete loss of consciousness. Note: Children may reenact the event in play.
4. Intense or prolonged distress after exposure to traumatic reminders.
5. Marked physiologic reactivity after exposure to trauma-related stimuli.

Ms. XX has experienced recurrent, intrusive memories, traumatic nightmares, and flashbacks.

Specific Components of Medico-legal Reports (cont'd)

- Any other findings, if indicated:
 - Laboratory or other diagnostic results (rarely indicated)
- Summary and interpretation of findings:
 - Assessment and summary of the degree of consistency between history, exam, and other information
 - Assessment and summary of degree of consistency between comprehensive findings, history of torture or ill treatment, and clinical sequelae
 - Any recommendations for further assessment and care



Degrees of Consistency

Not consistent	The lesion could not have been caused by the trauma described
Consistent with	The lesion could have been caused by the trauma described, but it is nonspecific and there are many other possible causes
Highly consistent	The lesion could have been caused by the trauma described, and there are few other possible causes
Typical of	This is an appearance that is usually found with this type of trauma, but there are other possible causes
Diagnostic of	This appearance could not have been caused in any way other than that described

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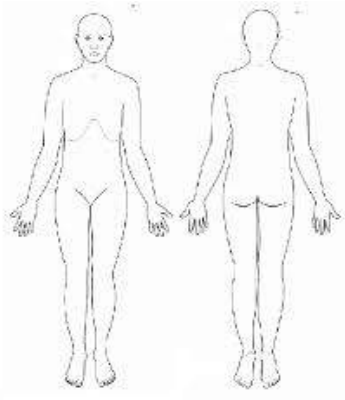
23. Summary

It is my professional assessment that Ms. XX demonstrates physical and psychological evidence of repeated physical, sexual, and verbal abuse. The physical examination findings were highly consistent with a history of physical abuse and diagnostic of female genital mutilation, for which there is no medical indication. Sometimes Traumatic Brain Injury, which is possible in victims of recurrent violence, can present with symptoms similar to Depression and Posttraumatic Stress Disorder, and this can be evaluated further through the use of brain imaging and extensive cognitive testing. However, it is sometimes difficult to differentiate organic causes from mood disorders in these situations. Depression, Posttraumatic Stress Disorder, and Traumatic Brain Injury can also occur comorbidly (together). I recommend that Ms. XX receive medical and psychological treatment for her ongoing medical and psychiatric issues. I would be willing to answer any questions or further explain my findings.

DATED:

[Name and degrees]

Supplemental Materials



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Forensic Photography

- Can be powerful and illustrative of findings
- Not necessarily shown to influence judicial decisions
- Ensure informed consent is obtained.
- Maintain individual's privacy through de-identification.
- Storage:
 - Locked cabinet or password-protected computer
 - Encrypted at level used for protection of patient information
- Securely share photos with asylum seeker's attorney.



Special Considerations

- Avoid making conclusions that are outside your expertise; especially avoid making “legal” conclusions (e.g. credibility).
- Delays in filing
- Severity of sequelae of past persecution



TESTIMONY



Testimony

- Medico-legal report can serve as written testimony.
- Oral testimony is often not necessary.
 - Telephonic
 - In-person
- If oral testimony is requested, clarify:
 - Reason for testimony
 - Whether telephonic or in-court
 - Date and time of anticipated testimony
 - Whether a subpoena is involved
 - Any preparation for cross-examination



**COLLABORATION WITH
ATTORNEYS AND OTHER
LEGAL
REPRESENTATIVES**



Preparation in Advance

- Initial connection before the evaluation:
 - Nonprofit organizations
 - Independent attorneys
 - Law school clinics
- Communication with attorney(s) in advance:
 - Legal rationale for asylum and any concerns
 - Type of evaluation indicated
 - Timeline
- Materials to request:
 - Asylum seeker's statement
 - Medical records, if available
 - Country conditions for context
- Appropriate professional interpretation services



Communication After Evaluation

- Check in with the attorney about diagnoses or concerns.
- Share a draft of the evaluation with the attorney.
- Be open to appropriate feedback and possible revision.
- Clarify the need for a notarized document.
- Finalize and send the affidavit to the attorney.



THANK YOU.

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