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ISSUE DATE: APRIL 7, 2014
RULE ADOPTIONS

LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
**STATE BOARD OF MARRIAGE AND FAMILY THERAPY EXAMINERS
PROFESSIONAL COUNSELOR EXAMINERS COMMITTEE**

Adopted New Rules: N.J.A.C. 13:34-9A and 31

Custody/Parenting Time Evaluations and/or Termination of Parental Rights Evaluations

Proposed: March 4, 2013, at 45 N.J.R. 435(a).

Adopted: June 13, 2013, by the State Board of Marriage and Family Therapy Examiners, Ben K. Beitin, Ph.D, President.

Filed: February 26, 2014, as R.2014 d.053, **without change**.

Authority: N.J.S.A. 45:8B-13 and 34 et seq.

Effective Date: April 7, 2014.

Expiration Date: September 10, 2016.

Summary of Public Comments and Agency Responses:

The official comment period ended May 3, 2013. The Board of Marriage and Family Therapy Examiners (Board) received comments from Debra L. Wentz, Ph.D., Chief Executive Officer, The New Jersey Association of Mental Health and Addiction Agencies, Inc. (NJAMHAA).

1. COMMENT: NJAMHAA expressed support for the Board's clarification of the authorized responsibilities of various professionals and the process in conducting custody/parenting time and termination of parental rights evaluations. The NJAMHAA also noted that the guidelines and specific requirements for training and credentials will help practitioners focus on treatment and refer individuals to other providers who specialize in parenting/custody issues when needed.

RESPONSE: The Board thanks the NJAMHAA for its support.

2. COMMENT: The NJAMHAA requested that the Board consider incorporating specific rules about disability determinations. The NJAMHAA notes that, the number of determination requests has grown so significantly over the past few years that they are affecting providers' ability to focus on treatment. The NJAMHAA further notes that an increasing number of individuals are seeking treatment to "prove they are disabled" to qualify for benefits, rather than seeking services to "get well." According to the NJAMHAA, because their mission is to "maximize individual potential" and promote health and

wellness, providers are finding themselves at odds with individuals seeking financial support via disability claims for mental health issues. The NJAMHAA believes that if disability factors are removed, it is likely that at least 25 percent of an agency's referrals would not seek services from organizations.

RESPONSE: The Board appreciates the suggestion, but it is outside the scope of this rulemaking. The Board will consider the issue and, if appropriate, propose a rule change in a separate proposal.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are governed by N.J.S.A. 45:8B-13 et seq., and are not subject to any Federal requirements or standards. Although the adopted new rules are not subject to any Federal requirements or standards, where appropriate, the Board has voluntarily required licensees to comply with applicable Federal laws and regulations. Specifically, N.J.A.C. 13:34-9A.5 and 31.6 require licensees to provide parties with information concerning the limits of confidentiality, including confidentiality limitations with respect to alcohol and drug abuse patient information imposed pursuant to 42 CFR Part 2.

Full text of the adopted new rules follows:

SUBCHAPTER 9A. CUSTODY/PARENTING TIME EVALUATIONS AND/OR TERMINATION OF PARENTAL RIGHTS EVALUATIONS

13:34-9A.1 Purpose and scope

The rules in this subchapter set forth the minimum requirements for licensed marriage and family therapists who perform custody/parenting time evaluations and/or termination of parental rights evaluations.

13:34-9A.2 Qualifications

(a) A licensee shall be qualified to perform custody/parenting time evaluations and/or termination of parental rights evaluations through education, training, and/or supervised experience in all of the following categories:

1. Child growth and development;
2. Parent-child bonding;
3. Scope of parenting;
4. Adult development and psychopathology;
5. Family functioning;
6. Child and family development;
7. Child and family psychopathology;

8. The impact of divorce or family dissolution on children; and

9. The impact of age, gender, race, ethnicity, national origin, language, culture, religion, sexual orientation/identity, disability, and socioeconomic status on custody/parenting time evaluations.

(b) When the topics in (b)1 through 5 below are involved, a licensee shall have education, training, and/or supervised experience in the specific topic(s) or the licensee shall refer the case to a licensed health care provider, or obtain a consultation with an expert who has the relevant education, training, and/or experience:

1. Physical, sexual, or psychological abuse of spouse or children;

2. Neglect of children;

3. Substance abuse or other addictions that impair the ability to parent;

4. Medical, physical, and/or neurological impairment that affects the ability to parent; or

5. Other areas beyond the licensee's expertise that are relevant to the custody/parenting time evaluation.

(c) Applicants for licensure who hold a temporary permit pursuant to N.J.A.C. 13:34-5 or interns shall not perform any part of custody/parenting time evaluations and/or termination of parental rights evaluations.

(d) A licensee shall maintain documentation that demonstrates the licensee's education, training, or supervised experience in the topics from (a) and (b) above.

(e) A licensee shall maintain documentation of the referral or the consultation, if a licensee refers a case to a licensed health care provider, or consults with an expert, pursuant to (b) above.

13:34-9A.3 Dual relationships

(a) If a licensee is, or has been, a treating therapist for any person who is part of the custody/parenting time evaluation and/or termination of parental rights evaluation, the treating therapist shall not assume either the role of an evaluator in the custody/parenting time evaluation and/or termination of parental rights evaluation, or the role of a parenting coordinator and shall advise any party or court of this prohibition.

(b) A licensee who is a treating therapist may report on a client's mental health status and treatment issues but shall not make any recommendations regarding custody or termination of parental rights.

(c) After the evaluation process is completed, a licensee, whose initial involvement with a case has been as an evaluator, may agree to function subsequently as a treating therapist or parent coordinator, but shall be precluded from functioning as an evaluator in the case.

[page=630] 13:34-9A.4 Communications

(a) If a licensee is court-appointed, the licensee shall communicate any information only to the court and both parties, or their attorneys, simultaneously, either in writing or through a conference call.

(b) If a licensee is selected by both parties without a court appointment, the licensee shall communicate any information only to both parties, or their attorneys, simultaneously, either in writing or through a conference call.

(c) If a licensee is selected by only one party, the licensee shall communicate any information only to that party, or the party's attorney.

13:34-9A.5 Required disclosures

(a) A licensee shall provide information, in writing, to the parties to assist them in understanding the nature of the custody/parenting time evaluation and/or termination of parental rights evaluation and the terms of their agreement to participate. This information shall include the following:

1. Purpose, procedures, and methods;
2. Fees;
3. Responsibility of parties for payment of the fees and whether payment will be required prior to the delivery of any report;
4. Limits of confidentiality, including the limitations set forth in 42 CFR Part 2, which is incorporated herein by reference;
5. Special policies pertaining to issues, such as canceled and/or missed appointments; and
6. Limitation on communications as set forth in N.J.A.C. 13:34-9A.4.

(b) A licensee shall inform the parties about the purpose of any assessment instruments, interview techniques, and the use of any information collected. The licensee shall provide this information, as appropriate, to children, to the extent that they are able to understand.

13:34-9A.6 Fees

(a) Before commencing the custody/parenting time evaluation and/or termination of parental rights evaluation, a licensee shall inform the party or parties responsible for paying the fees, in writing, of the estimated fees for all anticipated services and any additional fees, should the licensee be required, requested, or mandated to perform additional services.

(b) A licensee shall provide the party or parties responsible for paying the fees with complete documentation of all fees, itemizing time, charges, and services.

(c) A licensee may accept payment of fees by retainer or by a pre-arranged fee schedule.

1. If a partial retainer is accepted, a licensee shall inform the court, attorneys, and/or parties of the

schedule for payment of the remainder and of any contingent relationship between complete payment and final delivery of services. A licensee shall inform the court, attorneys, and/or parties that payment in excess of the reasonable estimate is expected if delivery of services unforeseeably exceeds that anticipated. A licensee shall inform the court, attorneys, and/or parties that unused fees will be refunded as soon as possible upon completion of the professional services.

2. If payment by a fee schedule is accepted, a licensee shall provide a complete explanation of the expected per-visit payment or other scheduled costs.

(d) A licensee may require payment for a report prior to its delivery provided that prior notification has been given to the parties under (a) above.

13:34-9A.7 Reports and recommendations

(a) A licensee's written report shall identify the party or parties on whose behalf the evaluation was prepared and list all individual(s) personally evaluated.

(b) A licensee shall complete written reports in a timely manner. Delays of more than two months from when all data has been collected relevant to the custody/parenting time evaluation and/or termination of parental rights evaluation are considered excessive. In the event of extenuating circumstances, such as an inability to collect final documents from collateral contacts, the licensee shall provide the reasons for the delay, in writing, to the party to whom the report is due in accordance with (d), (e), and (f) below.

(c) A licensee shall not provide any opinion regarding any individual who has not been personally evaluated by the licensee. A licensee may report what an evaluated individual has stated or address theoretical issues or hypothetical questions, provided the limited basis of the information is explained.

(d) A licensee that is court-appointed shall submit the report only to the court and to both parties, or their attorneys, unless otherwise specified in a court order.

(e) A licensee selected by both parties shall submit the report only to both parties, or their attorneys, unless otherwise specified in a consent order.

(f) A licensee selected by only one party shall submit the report only to that party, or that party's attorney, unless the party notifies the licensee in writing that the party does not want to receive the report.

SUBCHAPTER 31. PROFESSIONAL COUNSELORS: CUSTODY/PARENTING TIME EVALUATIONS AND/OR TERMINATION OF PARENTAL RIGHTS EVALUATIONS

13:34-31.1 Purpose and scope

The rules in this subchapter set forth the minimum requirements for licensed professional counselors who perform custody/parenting time evaluations and/or termination of parental rights evaluations.

13:34-31.2 Definitions

As used in this subchapter, "licensee" means a licensed professional counselor.

13:34-31.3 Qualifications

(a) A licensee shall be qualified to perform custody/parenting time evaluations and/or termination of parental rights evaluations through education, training, and/or supervised experience in all of the following categories:

1. Child growth and development;
2. Parent-child bonding;
3. Scope of parenting;
4. Adult development and psychopathology;
5. Family functioning;
6. Child and family development;
7. Child and family psychopathology;
8. The impact of divorce or family dissolution on children; and
9. The impact of age, gender, race, ethnicity, national origin, language, culture, religion, sexual orientation/identity, disability, and socioeconomic status on custody/parenting time evaluations.

(b) When the topics in (b)1 through 5 below are involved, a licensee shall have education, training, and/or supervised experience in the specific topic(s) or the licensee shall refer the case to a licensed health care provider, or obtain a consultation with an expert who has the relevant education, training, and/or experience:

1. Physical, sexual, or psychological abuse of spouse or children;
2. Neglect of children;
3. Substance abuse or other addictions that impair the ability to parent;
4. Medical, physical, or neurological impairment that affects the ability to parent; or
5. Other areas beyond the licensee's expertise that are relevant to the custody/parenting time evaluation.

(c) Licensed associate counselors, interns, and students shall not perform any part of custody/parenting time evaluations and/or termination of parental rights evaluations.

(d) A licensee shall maintain documentation that demonstrates the licensee's education, training or

supervised experience in the topics from (a) and (b) above.

(e) A licensee shall maintain documentation of the referral or the consultation, if the licensee refers a case to a licensed health care provider, or consults with an expert, pursuant to (b) above.

13:34-31.4 Dual relationships

(a) If a licensee is, or has been, a treating therapist for any person who is part of the custody/parenting time evaluation and/or termination of parental rights evaluation, the treating therapist shall not assume either [page=631] the role of an evaluator in the custody/parenting time evaluation and/or termination of parental rights evaluation, or the role of a parenting coordinator, and shall advise any party or court of this prohibition.

(b) A licensee who is a treating therapist may report on a client's mental health status and treatment issues but shall not make any recommendations regarding custody or termination of parental rights.

(c) After the evaluation process is completed, a licensee, whose initial involvement with a case has been as an evaluator, may agree to function subsequently as a treating therapist or parent coordinator, but shall be precluded from functioning as an evaluator in the case.

13:34-31.5 Communications

(a) If a licensee is court-appointed, the licensee shall communicate any information only to the court and both parties, or their attorneys, simultaneously, either in writing or through a conference call.

(b) If a licensee is selected by both parties without a court appointment, the licensee shall communicate any information only to both parties, or their attorneys, simultaneously, either in writing or through a conference call.

(c) If a licensee is selected by only one party, the licensee shall communicate any information only to that party, or the party's attorney.

13:34-31.6 Required disclosures

(a) A licensee shall provide information, in writing, to the parties to assist them in understanding the nature of the custody/parenting time evaluation and/or termination of parental rights evaluation and the terms of their agreement to participate. This information shall include the following:

1. Purpose, procedures, and methods;
2. Fees;
3. Responsibility of parties for payment of the fees and whether payment will be required prior to the delivery of any report;
4. Limits of confidentiality, including the limitations set forth in 42 CFR Part 2, which is incorporated herein by reference;

5. Special policies pertaining to issues, such as canceled and/or missed appointments; and

6. Limitation on communications as set forth in N.J.A.C. 13:34-31.5.

(b) A licensee shall inform the parties about the purpose of any assessment instruments, interview techniques, and the use of any information collected. The licensee shall provide this information, as appropriate, to children, to the extent that they are able to understand.

13:34-31.7 Fees

(a) Before commencing the custody/parenting time evaluation and/or termination of parental rights evaluation, a licensee shall inform the party or parties responsible for paying the fees, in writing, of the estimated fees for all anticipated services and any additional fees, should the licensee be required, requested, or mandated to perform additional services.

(b) A licensee shall provide the party or parties responsible for paying the fees with complete documentation of all fees, itemizing time, charges, and services.

(c) A licensee may accept payment of fees by retainer or by a pre-arranged fee schedule.

1. If a partial retainer is accepted, a licensee shall inform the court, attorneys, and/or parties of the schedule for payment of the remainder and of any contingent relationship between complete payment and final delivery of services. A licensee shall inform the court, attorneys, and/or parties that payment in excess of the reasonable estimate is expected if delivery of services unforeseeably exceeds that anticipated. A licensee shall inform the court, attorneys, and/or parties that unused fees will be refunded as soon as possible upon completion of the professional services.

2. If payment by a fee schedule is accepted, a licensee shall provide a complete explanation of the expected per-visit payment or other scheduled costs.

(d) A licensee may require payment for a report prior to its delivery provided that prior notification has been given to the parties under (a) above.

13:34-31.8 Reports and recommendations

(a) A licensee's written report shall identify the party or parties on whose behalf the evaluation was prepared and list all individual(s) personally evaluated.

(b) A licensee shall complete written reports in a timely manner. Delays of more than two months from when all data has been collected relevant to the custody/parenting time evaluation and/or termination of parental rights evaluation are considered excessive. In the event of extenuating circumstances, such as an inability to collect final documents from collateral contacts, the licensee shall provide the reasons for the delay, in writing, to the party to whom the report is due in accordance with (d), (e), and (f) below.

(c) A licensee shall not provide any opinion regarding any individual who has not been personally evaluated by the licensee. A licensee may report what an evaluated individual has stated or address

theoretical issues or hypothetical questions, provided the limited basis of the information is explained.

(d) A licensee who is court-appointed shall submit the report only to the court and to both parties, or their attorneys, unless otherwise specified in a court order.

(e) A licensee who is selected by both parties shall submit the report only to both parties, or their attorneys, unless otherwise specified in a consent order.

(f) A licensee who is selected by only one party shall submit the report only to that party, or that party's attorney unless the party notifies the licensee in writing that the party does not want to receive the report.