

# Attachment

## 15-DAY PROPOSED REGULATION TEXT

### Guidelines on Court Appointment of Forensic Evaluators

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospital Operations

Adopt new article 7.5 and sections 4750, and 4751 ~~and 4752~~ to title 9, California Code of Regulations to read as follows.

NOTE: The entire text in sections 4750 and 4751 is new regulatory language as originally proposed on January 18, 2019 and is shown in plain text. The modifications proposed as part of the 15-day changes are shown in single underline to indicate additions, and ~~single strikeout~~ to show deletions.

#### **Article 7.5. Alienist Guidelines on Court Appointment of Forensic Evaluators**

##### **~~§ 4750. Purpose and Scope.~~**

~~This regulation is established pursuant to Penal Code section 1369, subdivision (h), to create guidelines for education and training for the court to consider in the appointment of a psychiatrist or licensed psychologist to provide forensic evaluations in cases where a question has been raised, under Penal Code sections 1370, 1370.01, or 1370.1, as to a defendant's competency to stand trial. If the court is unable to locate a reasonably available expert who meets the guidelines or who has equivalent experience and skills, the court has discretion to appoint an expert who does not meet these guidelines.~~

~~NOTE: Authority Cited: Sections 4005.1, 4027, 4101 and 4312, Welfare and Institutions Code. Section 1369, Penal Code. Reference: Sections 1369, 1370, 1370.01 and 1370.1, Penal Code.~~

##### **~~§ 4751-4750. Definitions.~~**

- (a) "Evaluator" means a psychiatrist or licensed psychologist appointed by a court to provide Forensic Evaluations as defined in this section.

- (b) "Forensic Evaluation" means the assessment of a defendant, ordered by a court, in which the Evaluator opines on a defendant's competency to stand trial pursuant to specific psycho-legal referral question related to Penal Code sections 1369 et seq., and competency to stand trial.
- (c) "Incompetent to stand trial" means that as a result of mental disorder or a developmental disability the defendant ~~does not have the ability~~ is unable to understand the nature of the criminal proceedings against him or her or to assist counsel in the conduct of a defense in a rational manner.
- (d) "Licensed psychologist" means a person licensed as a psychologist by the California Board of Psychology.
- (e) "Psychiatrist" means an allopathic physician licensed by the Medical Board of California who has completed a Board-approved residency-training program in psychiatry or an osteopathic physician licensed by the Osteopathic Medical Board of California who has completed a Board-approved residency-training program in psychiatry.
- (f) ~~"Psycho-legal" means specific applications of psychiatry or psychology to the applicable legal requirements.~~

NOTE: Authority Cited: ~~Sections 4005.1, 4027, 4101 and 4312, Welfare and Institutions Code. Section 1369, Penal Code. Reference: Sections 1369, 1370, 1370.01 and 1370.1, Penal Code.~~

**§ ~~4752-4751.~~ Forensic Evaluator Training Requirements.**

- (a) The court shall appoint a psychiatrist or licensed psychologist to evaluate whether a criminal defendant is incompetent to stand trial. This evaluation shall include: the nature of a defendant's mental disorder; a defendant's ability or

inability to understand the nature of the criminal proceedings or to assist counsel in a rational manner in the conduct of a defense; and, if within the scope of his or her license, whether treatment with antipsychotic medication is medically appropriate and likely to restore the defendant to mental competence. In considering an appointment, the court shall appoint an expert who meets the provisions in subsection (1), (2), **or** (3) of this section **and** who meets the provision in subsections (4), if applicable, and (5) of this section, or an expert with equivalent experience and skills.

(1) If a psychiatrist, the psychiatrist shall have a State of California medical license in a ~~renewed~~ **and** current status, without any restrictions prohibiting practice, **and** one of the following:

- (A) board certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry;
- (B) eligibility for board certification by the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; **or**
- (C) completion of a fellowship in forensic psychiatry.

(2) If a psychologist, the psychologist shall have a State of California psychology license in ~~renewed~~ **and** current status **and** one of the following:

- (A) board certification in forensic psychology by the American Board of Professional Psychology;

- (B) eligibility for board certification in forensic psychology by the American Board of Professional Psychology; **or**
  - (C) completion of a post-doctoral training in forensic psychology.
- (3) If a psychiatrist or licensed psychologist who does not meet either subsection (1) or (2) above, the expert shall have training or experience consisting of:
- (A) At least 24 hours of specialized forensic training relating to incompetency evaluations.
  - (B) Experience in drafting at least six forensic reports submitted to a court or, if fewer than six, proof provided to the court, prior to appointment, that at least three forensic report submitted to a court was reviewed by. ~~If a peer review panel composed of members who are experienced in the criminal justice system and familiar with the issues of competency and criminal responsibility is available, the court may require a psychiatrist or licensed psychologist to provide proof, prior to appointment, that three of a psychiatrist or licensed psychologist's redacted reports have been reviewed by such a panel.~~
- (4) ~~(C)~~ If evaluating for developmental disabilities, experience in the treatment and assessment of individuals with developmental disabilities.
- (5) ~~(4)~~ The expert shall have completed, within the 24 months preceding the appointment, eight hours of the total continuing education courses, ~~as~~ required by their respective licensing board, in forensic evaluation.

~~(b) Other experts.~~

~~(1) If, within a reasonable period of time, the court is unable to locate a reasonably available psychiatrist or licensed psychologist who meets these guidelines or who has equivalent experience and skills, the court shall have the discretion to appoint an expert who does not meet these guidelines.~~

~~(2) In cases wherein the court may benefit from an evaluation by an expert with a specialized area of expertise to evaluate competency, the court may appoint a specialized expert who does not meet these guidelines.~~

NOTE: Authority Cited: ~~Sections 4005.1, 4027, 4101 and 4312, Welfare and Institutions Code. Section 1369, Penal Code. Reference: Sections 1369, 1370, 1370.01 and 1370.1, Penal Code.~~