

104 CMR: DEPARTMENT OF MENTAL HEALTH

104 CMR 33.00: DESIGNATION AND APPOINTMENT OF QUALIFIED MENTAL HEALTH PROFESSIONALS

Section

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33.01: Authorization to Apply for Hospitalization Pursuant to M.G.L. c.123, § 12(a)

(1) The following persons may perform an examination and apply for hospitalization pursuant to M.G.L. c. 123, § 12(a):

- (a) Physician. Any physician who is licensed pursuant to M.G.L. c. 112.
- (b) Qualified Psychologist. A psychologist who is licensed pursuant to M.G.L. c. 112, §§ 118 through 129A.
- (c) Qualified Advanced Practice Registered Nurse (APRN). A registered nurse licensed under M.G.L. c. 112, § 80B and authorized by the Board of Registration in Nursing to practice as an Advanced Practice Registered Nurse.
- (d) Licensed Independent Clinical Social Worker (LICSW). A social worker who is licensed pursuant to M.G.L. c. 112, §§ 130 through 137.

(2) In an emergency, if a physician, Qualified Psychologist, Qualified APRN or an LICSW is not available, a police officer may apply for hospitalization pursuant to M.G.L. c. 123, § 12(a).

(3) Application for hospitalization pursuant to M.G.L. c. 123, § 12(a) shall be made upon such form as is prescribed by the Commissioner.

33.02: Designation of Physicians and Qualified Advanced Practice Registered Nurses Pursuant to M.G.L. c. 123, § 12(b)

(1) Designated Physicians and Designated Qualified Advanced Practice Registered Nurses (APRN). A Designated Physician is a physician who satisfies the requirements established by 104 CMR 33.02(1)(b) for purposes of authorizing admissions pursuant to M.G.L. c. 123, § 12(b). A Designated Qualified APRN is an advanced practice registered nurse who satisfies the requirements established by 104 CMR 33.02(1)(c) for purposes of authorizing admissions pursuant to M.G.L. c. 123, § 12(b).

(a) A public or private facility which admits patients under M.G.L. c. 123, § 12 may designate physicians or Qualified APRNs on its medical staff as Designated Physicians or Designated Qualified APRNs to authorize admissions to such facility for up to three days under M.G.L. c. 123, § 12(b).

(b) To be eligible for designation under 104 CMR 33.02, a physician shall demonstrate an understanding of the legal and clinical requirements for hospitalization under M.G.L. c. 123, § 12(b); and

- 1. shall be certified or eligible to be certified by the American Board of Psychiatry and Neurology, or shall have had six months accredited residency training in psychiatry, or shall be enrolled in and working at an accredited psychiatry residency training site;
- 2. shall be privileged to admit to the facility; and
- 3. shall be licensed to practice medicine under M.G.L. c. 112.

(c) To be eligible for designation under 104 CMR 33.02, a Qualified APRN shall demonstrate an understanding of the legal and clinical requirements for hospitalization under M.G.L. c. 123, § 12(b); and

- 1. shall be licensed under M.G.L. c. 112, § 80B and authorized by the Board of Registration in Nursing to practice as a Psychiatric APRN, including authorization to practice as a Psychiatric Mental Health Clinical Nurse Specialist; and
- 2. shall be privileged to admit to the facility.

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(d) Designations shall be made and renewed at such periods of time as may be established by the facility for such medical staff designations.

(e) Authorization for admission pursuant to M.G.L. c. 123, § 12(b) shall be made upon such form as is prescribed by the Commissioner.

(f) Where extenuating circumstances exist, the Commissioner may, after consultation with the Deputy Commissioner for Clinical and Professional Services, from time to time waive the qualification requirements set forth in 104 CMR 33.02(1)(b)1. and (c)1. Requests for waiver shall detail the circumstances justifying such waiver. If the Department grants a waiver, it shall attach such conditions regarding training, experience, supervision, and consultation that it deems necessary to safeguard the admission process pursuant to M.G.L. c. 123, § 12(b).

33.03: Designation of Psychiatrists, Psychologists and Other Clinicians Qualified to Conduct Certain Forensic and Other Court Ordered Examinations

(1) Definitions.

Assistant Commissioner. The Assistant Commissioner for Forensic Mental Health Services who has been appointed by the Commissioner as having primary responsibility for forensic mental health service delivery.

Candidate. A clinician accepted by the Assistant Commissioner as a trainee for certification in accordance with 104 CMR 33.03.

Certified Juvenile Court Clinician I (CJCC I). A clinician certified in accordance with 104 CMR 33.03 to conduct court ordered evaluations pursuant to M.G.L. c. 119 and c. 210; provided, however, that the Department of Youth Services (DYS) shall determine the necessary qualifications and certifications for clinicians conducting diagnostic studies on its behalf pursuant to M.G.L. c. 119, § 68A in DYS facilities.

Certified Juvenile Court Clinician II (CJCC II). A psychiatrist or psychologist certified in accordance with 104 CMR 33.03 to conduct court ordered examinations of:

- (a) individuals younger than 21 years old before the Superior Court pursuant to M.G.L. c. 123, §§ 15 through 19;
- (b) individuals younger than 21 years old before the Juvenile Court pursuant to M.G.L. c. 123, §§ 15 through 19; and any individual pursuant to M.G.L. c. 123, §§ 12(e) and 35; and c. 119 or c. 210;
- (c) individuals younger than 19 years old who require inpatient forensic evaluation at a Department of Mental Health facility ordered by a Juvenile, District, or Superior Court pursuant to M.G.L. c. 123, §§ 12(e), 15 through 18; and
- (d) individuals younger than 18 years old ordered by the Superior Court pursuant to M.G.L. c. 123; provided, however, that the DYS shall determine the necessary qualifications and certifications for clinicians conducting diagnostic studies on its behalf pursuant to M.G.L. c. 119, § 68A. A CJCC II may also be authorized by the Assistant Commissioner to conduct evaluations of individuals 21 years of age or older pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35 who are parties to, or witnesses in, Juvenile Court proceedings.

Certified Juvenile Court Clinician Mentor I (CJCC Mentor I). A clinician certified in accordance with 104 CMR 33.03 as a CJCC I who is appointed to train CJCC I Candidates.

Certified Juvenile Court Clinician Mentor II (CJCC Mentor II). A psychiatrist or psychologist certified in accordance with 104 CMR 33.03 as a CJCC II who is appointed to train CJCC II Candidates.

Certified Juvenile Court Clinician Training and Certification Committee (CJCC Committee). A multidisciplinary committee appointed by the Assistant Commissioner to develop and implement a training and certification program for Juvenile Court Clinic evaluators who, as part of their employment or training, are required to conduct court ordered evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35; c. 119, or c. 210. The CJCC Committee serves the Assistant Commissioner in a training, credentialing, and advisory capacity.

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Department. Department of Mental Health.

Designated Forensic Professional (DFP). A Designated Forensic Psychiatrist or Psychologist.

Designated Forensic Professional Training and Certification Committee (DFP Committee). A multidisciplinary committee appointed by the Assistant Commissioner to develop and implement a training and certification program for psychologists and psychiatrists who, as part of their employment or training, are required to conduct court ordered evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35. The DFP Committee serves the Assistant Commissioner in a training, credentialing, and advisory capacity.

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Designated Forensic Psychiatrist. A psychiatrist designated pursuant to 104 CMR 33.03 to conduct examinations of persons 18 years of age or older before the District Court or any person before the Superior Court pursuant to M.G.L. c. 123, §§ 15 through 19; or any person before any court pursuant to M.G.L. c. 123, §§ 12 or 35, and to prepare reports of such examinations.

Designated Forensic Psychologist. A psychologist designated pursuant to 104 CMR 33.03 to conduct examinations of persons 18 years of age or older before the District Court or any person before the Superior Court pursuant to M.G.L. c. 123, §§ 15 through 19, or any person before any court pursuant to M.G.L. c. 123, §§ 12 or 35, and to prepare reports of such examinations.

District Court. For purposes of 104 CMR 33.00 all references to the District Court include the Boston Municipal Court Department.

Forensic Mental Health Supervisor. A forensic mental health professional appointed by the Assistant Commissioner to train and supervise DFPs, DFP Candidates and provisional DFPs and trainees as approved by the Assistant Commissioner.

(2) Physician Qualifications for Conducting Examinations. A physician qualified to conduct examinations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35 must:

- (a) have received designation as a Designated Forensic Psychiatrist as provided in 104 CMR 33.03(4); or
- (b) have been accepted by the Assistant Commissioner as a Designated Forensic Psychiatrist Candidate, as provided in 104 CMR 33.03(3) and be supervised by a Forensic Mental Health Supervisor appointed pursuant to 104 CMR 33.03(12); or
- (c) be a psychiatry resident participating in a training program approved by the Assistant Commissioner.

(3) Candidacy for Designation as a Designated Forensic Psychiatrist.

- (a) To be accepted as a Designated Forensic Psychiatrist Candidate, a physician must demonstrate to the satisfaction of the Assistant Commissioner that he or she:
 - 1. is licensed to practice medicine under M.G.L. c. 112, § 2;
 - 2. is either certified or eligible to be certified in psychiatry by the American Board of Psychiatry and Neurology, or has completed at least three years of postgraduate medical training, of which two years must be in an accredited psychiatric residency training program;
 - 3. has letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work; and
 - 4. is or will be employed in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35 or related forensic mental health work as determined by the Assistant Commissioner.
- (b) Individuals accepted as Designated Forensic Psychiatrist Candidates will be assigned a Forensic Mental Health Supervisor by the Assistant Commissioner or designee, and shall, within two years of such acceptance successfully complete a training plan approved by the DFP Committee in conducting evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35. The DFP Committee may, for good cause, extend the period of time within which the training plan must be completed for up to an additional year. Subsequent extensions beyond one year must be approved by the Assistant Commissioner.
- (c) The Assistant Commissioner may, for good cause, deny a psychiatrist's application to become a Designated Forensic Psychiatrist Candidate.

(4) Requirements for Designation as a Designated Forensic Psychiatrist. In addition to meeting the requirements in 104 CMR 33.03(3)(a), a psychiatrist seeking designation as a Designated Forensic Psychiatrist must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

- (a) has successfully completed training approved by the Assistant Commissioner in conducting evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or has experience conducting such evaluations;

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- (b) has completed approved training visits to Bridgewater State Hospital, a Department adult inpatient facility, a Court Clinic, a county or State Correctional facility other than Bridgewater State Hospital, the Massachusetts Alcohol and Substance Abuse Center, and at least one other substance abuse treatment facility that accepts admissions pursuant to M.G.L. c. 123, § 35;
- (c) has completed at least two kinds of forensic reports of a quality acceptable to the Assistant Commissioner or designee;
- (d) has successfully completed a written examination approved by the Assistant Commissioner assessing knowledge relevant to performing forensic evaluations pursuant to M.G.L. c. 123; and
- (e) is or will be employed in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or related forensic mental health work as determined by the Assistant Commissioner.

(5) Term of Designated Forensic Psychiatrist Designation; Renewal.

- (a) Designated Forensic Psychiatrist designation shall be valid for three years, and shall be renewable for successive three year periods pursuant to 104 CMR 33.03(5)(b).
- (b) No later than two months prior to the expiration of his or her designation, a Designated Forensic Psychiatrist who seeks to have his or her designation renewed shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:
 1. is licensed to practice medicine under M.G.L. c. 112, § 2;
 2. is providing services at a level of quality acceptable to the Assistant Commissioner or designee, including making available for review copies of forensic mental health reports that he or she has completed in the capacity as a Designated Forensic Psychiatrist;
 3. has participated in Department education activities relevant to forensic work during the previous three-year period;
 4. has participated in all Department quality improvement programs required by the Assistant Commissioner;
 5. has either conducted three court ordered evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or has performed commensurate forensic mental health work, as determined by the Assistant Commissioner, in the previous three-year period; and
 6. continues to be employed in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or commensurate forensic mental health work as determined by the Assistant Commissioner; provided, however, that the Assistant Commissioner may waive this requirement for one three-year renewal period at the clinician's request.

(6) Waiver of Requirements of DFP Designation for Psychiatrists. Psychiatrists who have extensive experience in forensic mental health work, who have met similar criteria for appointment as forensic psychiatrists in other states, who have completed a fellowship in forensic psychiatry, or who are certified in Forensic Psychiatry by the American Board of Psychiatry and Neurology, may apply for and, at the discretion of the Assistant Commissioner, be granted a waiver of the requirements established in 104 CMR 33.03(4) for designation as a Designated Forensic Psychiatrist. The Assistant Commissioner shall determine which of the requirements for Designated Forensic Psychiatrist designation may be waived on an individual basis.

(7) Qualifications for [Clinicians] Conducting Examinations. A clinician not otherwise qualified as a physician but qualified to conduct examinations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35 must:

- (a) have received designation as a Designated Forensic Psychologist as provided in 104 CMR 33.03(9); or
- (b) have been accepted by the Assistant Commissioner as a Designated Forensic Psychologist Candidate, as provided in 104 CMR 33.03(8) and be supervised by a Forensic Mental Health Supervisor appointed pursuant to 104 CMR 33.03(12); or
- (c) have been approved as a provisional Designated Forensic Psychologist Candidate pursuant to 104 CMR 33.03(8)(c); or

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(d) be participating in a forensic psychology postdoctoral training program approved by the Assistant Commissioner.

(8) Candidacy for Designation as a Designated Forensic Psychologist.

(a) To be accepted as a Designated Forensic Psychologist Candidate, a psychologist shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:

1. is licensed as a psychologist and certified as a Health Service Provider under M.G.L. c. 112, §§ 118 through 121;
2. has obtained under the supervision of a licensed mental health professional, during graduate training or beyond, at least:
 - a. 2,000 hours of clinical experience in a setting with adult psychiatric patients with a mental illness as defined in 104 CMR 27.05(1): *General Admission Procedures*; or
 - b. 1,000 hours of clinical experience in an inpatient psychiatric hospital which accepts adults with a mental illness as defined by 104 CMR 27.05(1); or
 - c. demonstrable significant clinical experience working with adults with mental illness as approved by the Assistant Commissioner.
3. has letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work; and
4. is or will be employed in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35 or related forensic mental health work as determined by the Assistant Commissioner.

(b) Individuals accepted as Designated Forensic Psychologist Candidates will be assigned a Forensic Mental Health Supervisor by the Assistant Commissioner or designee, and shall, within two years of such acceptance, successfully complete a training plan approved by the DFP Committee for conducting evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35. The DFP Committee may, for good cause, extend the period of time within which the training plan must be completed for up to an additional year. Subsequent extensions beyond one year must be approved by the Assistant Commissioner.

(c) An individual who is not licensed in Massachusetts by the Board of Registration of Psychologists or certified as a Health Service Provider, but who has successfully completed a forensic psychology postdoctoral training program approved by the Assistant Commissioner or has sufficient postdoctoral psychology experience, as approved by the Assistant Commissioner, may be accepted as a provisional Designated Forensic Psychologist Candidate. Requests for such approval shall include a proposed plan for obtaining his or her applicable license. The supervision of a provisional Designated Forensic Psychologist Candidate, as well as the approved time frame for this designation, will be determined by the Assistant Commissioner.

(d) The Assistant Commissioner may, for good cause, deny a psychologist's application to become a Designated Forensic Psychologist Candidate.

(9) Requirements for Designation as a Designated Forensic Psychologist. In addition to meeting the requirements in 104 CMR 33.03(8)(a), a clinician seeking designation as a Designated Forensic Psychologist must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

- (a) has successfully completed a training program approved by the Assistant Commissioner in conducting evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or has experience conducting such evaluations;
- (b) has completed approved training visits to Bridgewater State Hospital, a Department adult inpatient facility, a Massachusetts Court Clinic, a county or State Correctional facility other than Bridgewater State Hospital, the Massachusetts Alcohol and Substance Abuse Center, and at least one other substance abuse treatment facility that accepts admissions pursuant to M.G.L. c. 123, § 35;
- (c) has completed at least two kinds of forensic reports of a quality acceptable to the Assistant Commissioner or designee;
- (d) has successfully completed a written examination approved by the Assistant Commissioner assessing knowledge relevant to performing forensic evaluations pursuant to M.G.L. c. 123; and

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(e) is or will be employed in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or related forensic mental health work as determined by the Assistant Commissioner.

(10) Term of Designated Forensic Psychologist Designation; Renewal.

(a) Designated Forensic Psychologist designation shall be valid for three years, and shall be renewable for successive three-year periods pursuant to 104 CMR 33.03(10)(b).

(b) No later than two months prior to the expiration of his or her certification, a Designated Forensic Psychologist who seeks to have his or her certification renewed shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:

1. is licensed as a psychologist and certified as a Health Service Provider under M.G.L. c. 112, §§ 118 through 121;
2. is providing services at a level of quality acceptable to the Assistant Commissioner or designee including making available for review copies of forensic mental health reports that he or she has completed in the capacity as a Designated Forensic Psychologist;
3. has participated in Department education activities relevant to forensic work during the previous three-year period;
4. has participated in all Department quality improvement programs required by the Assistant Commissioner;
5. has either conducted three court ordered evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or has performed commensurate forensic mental health work, as determined by the Assistant Commissioner, in the previous three-year period; and
6. continues to be employed or is providing services in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or commensurate forensic mental health work as determined by the Assistant Commissioner; provided, however, that the Assistant Commissioner may waive this requirement for one three-year renewal period at the clinician's request.

(11) Waiver of Requirements of DFP Designation for Psychologists. Psychologists who have extensive experience in forensic mental health work, who have met similar criteria for appointment as a forensic psychologist in other states, who have completed a postdoctoral fellowship in forensic psychology, or who are board certified in Forensic Psychology by the American Board of Professional Psychology, may apply for, and, at the discretion of the Assistant Commissioner, be granted a waiver of the requirements established in 104 CMR 33.03(9) for designation as a Designated Forensic Psychologist. The Assistant Commissioner will determine which requirements may be waived for Designated Forensic Psychologist designation on an individual basis.

(12) Forensic Mental Health Supervisor.

(a) A clinician who seeks appointment as a Forensic Mental Health Supervisor should apply to the Assistant Commissioner who, in consultation with the DFP Committee, shall determine whether the clinician is qualified for such appointment. Such determinations shall be made on the basis of the clinician's experience as a forensic evaluator and teacher, or other special contributions in forensic mental health work.

(b) An applicant for appointment as a Forensic Mental Health Supervisor shall be a DFP, unless, based on the applicant's other experience, 104 CMR 33.03(12)(b) is waived by the Assistant Commissioner.

(13) Qualifications for Conducting Examinations as a Certified Juvenile Court Clinician (CJCC). A clinician qualified to conduct evaluations before a Juvenile Court pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35; c. 119, or c. 210 must:

- (a) have satisfied the requirements for, and have received certification as a CJCC I as provided in 104 CMR 33.03(15); or
- (b) have satisfied the requirements for, and have received certification as a CJCC II as provided in 104 CMR 33.03(16); or

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- (c) have been accepted by the Assistant Commissioner as a CJCC I or II Candidate, as provided in 104 CMR 33.03(14); or
- (d) be a provisional Certified Juvenile Court Clinician Candidate approved pursuant to 104 CMR 33.03(14); or
- (e) be participating in a psychology postdoctoral training program approved by the Assistant Commissioner.

(14) Candidacy for Certification as a Certified Juvenile Court Clinician.

(a) To be accepted as a CJCC I Candidate, a clinician shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:

1. is currently licensed, as any of the following: a physician under M.G.L. c. 112, § 2; a psychologist and a Health Service Provider under M.G.L. c. 112, §§ 118 through 121; an independent clinical social worker licensed under M.G.L. c. 112, §§ 130 through 137; a mental health counselor licensed under M.G.L. c. 112, §§ 163 through 165; a marriage and family therapist licensed under M.G.L. c. 112, §§ 163 through 165; or other licensed clinician at the discretion of the Assistant Commissioner; and

a. if a physician, is either certified or eligible to be certified in Child and Adolescent Psychiatry by the American Board of Psychiatry and Neurology, or has completed at least three years of postgraduate medical training in psychiatry, of which one year must be in an accredited child psychiatric residency training program; or

b. if a clinician listed in 104 CMR 33.03(14)(a)2., has 2,000 hours of experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the beginning of graduate school training; or

c. if a licensed clinician currently in a training program approved by the Assistant Commissioner, has 1,000 hours of experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the beginning of graduate school training; or

d. has demonstrable significant clinical experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the beginning of graduate school training as approved by the Assistant Commissioner; and

e. has letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work; and

f. is or will be employed or providing services in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35; or c. 119 and c. 210 or related juvenile forensic mental health work as determined by the Assistant Commissioner.

2. An individual who is not licensed in Massachusetts as an independent clinical social worker licensed under M.G.L. c. 112, §§ 130 through 137; a mental health counselor licensed under M.G.L. c. 112, §§ 163 through 165; a marriage and family therapist licensed under M.G.L. c. 112, §§ 163 through 165; or other licensed clinician at the discretion of the Assistant Commissioner, but who has successfully completed sufficient clinical experience as approved by the Assistant Commissioner, may be accepted as a provisional CJCC I Candidate.

3. An individual who is not licensed in Massachusetts as required by the Board of Registration for Psychologists, but who has successfully completed a forensic psychology postdoctoral training program approved by the Assistant Commissioner or has sufficient post-doctoral psychology experience as approved by the Assistant Commissioner, may be accepted as a provisional CJCC I Candidate.

(b) To be accepted as a CJCC II Candidate, a clinician shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:

1. is currently licensed as either a physician under M.G.L. c. 112, § 2, or a psychologist licensed under M.G.L. c. 112, §§ 118 through 121; and

a. if a physician, is either certified or eligible to be certified in Child and Adolescent Psychiatry by the American Board of Psychiatry and Neurology, or has completed at least three years of postgraduate medical training in psychiatry, of which one year must be in an accredited child psychiatric residency training program; or

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- b. if a psychologist, has 2,000 hours of experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the time that marks the beginning of graduate school training; or
- c. if a licensed clinician currently in a training program approved by the Assistant Commissioner, has 1,000 hours of experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the beginning of graduate school training; or
- d. has demonstrable significant clinical experience in the evaluation and treatment of children and families in relation to the welfare of children cumulative from the beginning of graduate school training as approved by the Assistant Commissioner; and
- e. has letters attesting to his or her professional capabilities from at least two licensed mental health professionals familiar with his or her work; and
- f. is or will be employed or providing services in a setting in which he or she will be performing evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35; or c. 119 and c. 210 or related juvenile forensic mental health work as determined by the Assistant Commissioner.

2. An individual who is not licensed in Massachusetts as required by the Board of Registration for Psychologists, but who has successfully completed a forensic psychology postdoctoral training program or has sufficient postdoctoral psychology experience as approved by the Assistant Commissioner, may be accepted as a provisional CJCC II Candidate.

(c) Requests for approval as a provisional CJCC I or II Candidate shall include a proposed plan for obtaining applicable clinical licensure. The supervision and any needed additional training and mentoring of a provisional CJCC I and II Candidate, as well as the approved timeline for this designation, will be determined by the Assistant Commissioner.

(d) Clinicians accepted as CJCC I candidates will be assigned to a CJCC I Mentor and clinicians accepted as CJCC II candidates will be assigned to a CJCC II Mentor by the Assistant Commissioner or designee. The Mentor and the candidate will develop an individualized training plan to be completed within a two year period. Each such training plan shall be approved by the CJCC Committee. The CJCC Committee may, for good cause, extend the period of time within which the training plan must be completed for up to an additional year. Subsequent extensions beyond one year must be approved by the Assistant Commissioner.

(e) The Assistant Commissioner may, for good cause, deny a clinician's application to become a CJCC Candidate.

(f) In determining standards and procedures for qualifications for candidacy pursuant to 104 CMR 33.03(14), and for appointment as a CJCC pursuant to 104 CMR 33.03(15) and (16) the Assistant Commissioner, or his or her designee, shall consult with the Chief Justice of the Juvenile Court or his or her designee.

(15) Requirements for Certification as a CJCC I. In addition to meeting the requirements in 104 CMR 33.03(14)(a), a clinician seeking certification as a CJCC I must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

(a) has successfully completed CJCC I training approved by the Assistant Commissioner in conducting evaluations pursuant to M.G.L. c. 119 and c. 210 or has experience conducting such evaluations;

(b) has completed at least three training visits relevant to the work of the Juvenile or District Court, such as, but not limited to the following: a facility or program of the Department of Youth Services; an inpatient unit or other facility to which juveniles are committed by the Juvenile or District Court for forensic mental health evaluations; an alternative or special education program whose students include youth who are or have been involved with the Juvenile or District Court; or a residential treatment program for youth whose population include youth who are or have been involved with the Juvenile or District Court and which is operated by or under contract with the Department, the Department of Children and Families, the Department of Youth Services or the Department of Public Health;

(c) has completed at least two kinds of forensic reports of a quality acceptable to the Assistant Commissioner or designee;

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- (d) has successfully completed a written examination approved by the Assistant Commissioner assessing knowledge relevant to performing forensic evaluations pursuant to M.G.L. c. 123, c. 119 and c. 210; and
- (e) is or will be employed by the Department, or employed under a contract managed by the Department to provide services to the Juvenile Court as a CJCC I, or is performing commensurate forensic mental health work, as determined by the Assistant Commissioner.

(16) Requirements for Certification as a CJCC II. In addition to meeting the requirements in 104 CMR 33.03(14)(b), a psychiatrist or psychologist seeking certification as a CJCC II must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

- (a) has successfully completed a CJCC II training program approved by the Assistant Commissioner in conducting evaluations pursuant to M.G.L. c. 123, c. 119, and c. 210 or has experience conducting such evaluations;
- (b) has completed at least three training visits relevant to the work of the Juvenile or District Court, such as, but not limited to the following: a facility or program of the Department of Youth Services; an inpatient unit or other facility to which juveniles are committed by the Juvenile or District Court for forensic mental health evaluations; an alternative or special education program whose students include youth who are or have been involved with the Juvenile or District Court; or a residential treatment program for youth whose population include youth who are or have been involved with the Juvenile or District Court and which is operated by or under contract with the Department, the Department of Children and Families, the Department of Youth Services or the Department of Public Health;
- (c) has completed at least two kinds of forensic reports of a quality acceptable to the Assistant Commissioner or designee;
- (d) has successfully completed a written examination approved by the Assistant Commissioner assessing knowledge relevant to performing forensic evaluations pursuant to M.G.L. c. 123, c. 119, and c. 210; and
- (e) is or will be employed by the Department, or employed under a contract managed by the Department, to provide services to the Juvenile Court as a CJCC II, or is performing commensurate mental health work, as determined by the Assistant Commissioner.

(17) CJCC Mentors.

- (a) A clinician who seeks appointment as a CJCC Mentor should apply to the Assistant Commissioner who, in consultation with the CJCC Committee, shall determine whether the clinician is qualified for such appointment. Such determinations shall be made on the basis of the clinician's experience, including teaching or clinical work with children, families, and in juvenile forensic mental health.
- (b) An applicant for appointment as a CJCC Mentor shall be a CJCC I or II, unless, based on the applicant's other experience, this requirement is waived by the Assistant Commissioner.

(18) Term of CJCC Certification; Renewal.

- (a) CJCC I and CJCC II certification shall be valid for three years, and shall be renewable for successive three year periods pursuant to 104 CMR 33.03(18)(b).
- (b) No later than two months prior to the expiration of his or her certification, a CJCC clinician who seeks to have his or her certification renewed shall demonstrate to the satisfaction of the Assistant Commissioner that he or she:
 1. continues to hold the applicable Massachusetts clinical licensure;
 2. is providing services at a level of quality acceptable to the Assistant Commissioner or designee including making available for review copies of forensic mental health reports that he or she has completed in the capacity as a CJCC I or CJCC II;
 3. has participated in Department education activities relevant to juvenile forensic work during the previous three-year period;
 4. has participated in all Department quality improvement programs required by the Assistant Commissioner;
 5. has either conducted three court ordered evaluations pursuant to M.G.L. c. 123, §§ 12(e), 15 through 19, and 35, or c. 119, or c. 210, or has performed commensurate forensic mental health work, as determined by the Assistant Commissioner, in the previous three-year period; and

33.03: continued

6. continues to provide clinical services as a CJCC to the Juvenile or other Commonwealth Courts, as a Department employee or under a contract managed by the Department, or is performing commensurate mental health work, as determined by the Assistant Commissioner; provided, however, that the Assistant Commissioner may waive this requirement for one three-year renewal period at the clinician's request.

(19) Waiver of the Requirements for CJCC Certification. A qualified mental health professional may apply for, and at the discretion of the Assistant Commissioner, be granted, a waiver of the requirements established in 104 CMR 33.03(15) and (16) for CJCC certification if one or more of the following requirements is met:

- (a) the clinician is a Designated Forensic Psychiatrist;
- (b) the clinician is a Designated Forensic Psychologist who meets the hours of the child/family experience requirement as provided in 104 CMR 33.03(15) and (16);
- (c) the clinician is certified in Forensic Psychiatry by the American Board of Psychiatry and Neurology;
- (d) the clinician is certified or eligible for certification in Child and Adolescent Psychiatry by the American Board of Psychiatry and Neurology;
- (e) the clinician is board certified in Forensic Psychology by the American Board of Professional Psychology;
- (f) the clinician has substantial experience in juvenile forensic practice;
- (g) the clinician has met similar criteria for appointment as a juvenile forensic clinician in other states;
- (h) the clinician has completed a postdoctoral fellowship in forensic psychology and meets the hours of the child/family experience requirement as provided in 104 CMR 33.03(15) and (16); or
- (i) the clinician is a diplomate of the American Board of Forensic Social Workers.

The Assistant Commissioner shall determine which of the requirements for CJCC certification may be waived on an individual basis.

(20) Appointment of Qualified Clinicians for the Examination of Individuals Pursuant to M.G.L. c. 123 § 18.

- (a) The Assistant Commissioner may appoint:
 - 1. physicians and psychologists qualified in accordance with 104 CMR 33.03(20) to examine persons who are incarcerated or otherwise confined in a place of detention as to whether they are in need of hospitalization at a facility or Bridgewater State Hospital, in accordance with M.G.L. c. 123, § 18;
 - 2. physicians, psychologists and qualified advance practice registered nurses (APRN), qualified in accordance with 104 CMR 33.03(20) to examine persons committed to the facility pursuant to M.G.L. c. 123, § 18(a)½, and to report the results of their examination as may be ordered by the Court.
- (b) In appointing clinicians pursuant to 104 CMR 33.03(20) the Assistant Commissioner or his or her designee shall consult with the Superintendent of Bridgewater State Hospital to:
 - 1. develop ongoing standards for clinical screening of such persons and for liaison between the place of detention and the facility or Bridgewater State Hospital; and
 - 2. ensure that clinicians appointed for this purpose are familiar with such standards, and practice in accordance with them.
- (c) A physician appointed to conduct examinations pursuant to M.G.L. c. 123, §§ 18(a) or 18(a)½ shall be licensed to practice medicine under M.G.L. c. 112, § 2 and must demonstrate to the satisfaction of the Assistant Commissioner that the physician:
 - 1. is certified or eligible to be certified in psychiatry by the American Board of Psychiatry and Neurology; or
 - 2. has had three years of training and experience in the examination and treatment of persons with mental illness.
- (d) A psychologist appointed to conduct examinations pursuant to M.G.L. c. 123, §§ 18(a) or 18(a)½ shall have a doctoral degree; be licensed as a psychologist and certified as a Health Service Provider under M.G.L. c. 112, §§ 118 through 121 and must demonstrate to the satisfaction of the Assistant Commissioner that the psychologist has had three years of training and experience in the examination and treatment of persons with mental illness.

33.03: continued

(e) An APRN appointed to conduct examinations pursuant to M.G.L. c. 123, § 18(a)½ shall be licensed under M.G.L. c. 112, § 80B and authorized by the Board of Registration in Nursing to practice as a Psychiatric APRN, including authorization to practice as a Psychiatric Mental Health Clinical Nurse Specialist, and must demonstrate to the satisfaction of the Assistant Commissioner that the advanced practice registered nurse has had three years of training and experience in the examination and treatment of persons with mental illness.

(f) A physician or psychologist who is a Designated Forensic Professional or a Certified Juvenile Court Clinician II pursuant to 104 CMR 33.03 shall be deemed to meet the requirements for appointment under 104 CMR 33.03(20).

(g) Physicians, psychologists and APRNs may apply for, and at the discretion of the Assistant Commissioner, be granted a waiver of the requirements established in 104 CMR 33.03(20)(c), (d) or (e).

(21) Certification, designation, or appointment under 104 CMR 33.03 applies only to evaluations conducted pursuant to M.G.L. c. 123, c. 119, and c. 210 as defined in 104 CMR 33.03(1). Certification, designation, or appointment under 104 CMR 33.03 does not grant the clinician licensure, accreditation, or credential other than the authority to conduct evaluations, examinations, or supervision in accordance with 104 CMR 33.03.

33.04: Designation of Clinicians for the Examination of Persons Alleged to have an Alcohol or Substance Use Disorder.

(1) Definitions.

Qualified Social Worker: A Social Worker, who is designated pursuant to 104 CMR 33.05 to examine persons alleged to be in need of commitment to a facility pursuant to M.G.L. c. 123, § 35 as a result of an alcohol or substance use disorder and to prepare reports of such examinations.

Social Worker: A licensed independent clinical social worker, who is licensed under the provisions of M.G.L. c. 112, §§ 130 through 137.

(2) A clinician must be designated in accordance with 104 CMR 33.04 to be qualified to examine persons alleged to be in need of commitment, pursuant to M.G.L. c. 123, § 35.

(a) Deemed Designation. A Designated Forensic Professional or Certified Juvenile Court Clinician II shall be deemed designated to conduct such examinations.

(b) Designation by Assistant Commissioner.

1. A Social Worker who meets the requirements of 104 CMR 33.04(3) may be designated by the Assistant Commissioner as a Qualified Social Worker.

2. A Designated Forensic Professional Candidate or Certified Juvenile Court Clinician II Candidate who meets the requirements of 104 CMR 36.05(3)(b) though (e) may, at the discretion of the Assistant Commissioner, be designated by the Assistant Commissioner to conduct such examinations prior to full designation as a Designated Forensic Professional or a Certified Juvenile Court Clinician II.

(3) A Social Worker seeking designation pursuant to 104 CMR 33.04(2)(b), must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

(a) is currently licensed as an licensed independent clinical social worker;

(b) has substantial clinical experience in the evaluation or treatment of individuals with mental illness and substance use disorders;

(c) has successfully completed all aspects of training requirements approved by the Assistant Commissioner regarding conducting evaluations pursuant to M.G.L. c. 123, § 35 and has experience conducting such court-ordered evaluations, including making recommendations regarding commitment, under the supervision of another clinician who has been designated by the Assistant Commissioner to perform these evaluations;

(d) has completed training visits, approved by the Assistant Commissioner, to at least two facilities that accept admissions of persons committed pursuant to M.G.L. c. 123, § 35; and

(e) is or will be employed by the Department or employed under a contract managed by the Department to provide services in a setting in which he or she will be performing court-ordered evaluations pursuant to M.G.L. c 123, § 35.

33.04: continued

(4) Candidacy for Designation as a Qualified Social Worker.

(a) The Assistant Commissioner may accept a Social Worker who is employed by the Department or employed under a contract managed by the Department to examine persons pursuant to M.G.L. c. 123, § 35 as a Qualified Social Worker Candidate.

(b) To be accepted as a Qualified Social Worker Candidate, a Social Worker must demonstrate to the satisfaction of the Assistant Commissioner that he or she:

1. is currently licensed as a licensed independent clinical social worker; and
2. has substantial clinical experience in the evaluation or treatment of individuals with mental illness and substance use disorders.

(c) Until such time that a Qualified Social Worker Candidate meets the requirements for designation under 104 CMR 33.04(3), and is so designated, such clinician may perform examinations under M.G.L. c. 123, § 35 under the supervision of another clinician who has been designated by the Assistant Commissioner to perform these evaluations.

(d) An individual's candidacy as a Qualified Social Worker Candidate shall be valid for two years and may be renewed upon request, at the discretion of the Assistant Commissioner.

(5) A clinician designated or approved under 104 CMR 33.04 shall only be deemed designated or approved under 104 CMR 33.04 to conduct examinations pursuant to M.G.L. c. 123, § 35 and to clinically supervise evaluations pursuant to M.G.L. c. 123, § 35 conducted by clinicians who are candidates for this certification and no other type of court-ordered forensic evaluation that requires designation or candidacy as a Designated Forensic Professional or a Certified Juvenile Court Clinician.

(6) Term of Designation. A clinician's designation under 104 CMR 33.04 shall remain in effect for three years with renewals for additional three year terms provided that he or she demonstrates to the satisfaction of the Assistant Commissioner, upon request, that he or she:

(a) continues to hold the applicable Massachusetts licensure;

(b) is providing services at a level of quality acceptable to the Assistant Commissioner or designee, including making available for review copies of forensic reports that he or she has completed pursuant to M.G.L. c. 123, § 35;

(c) participates in Department education activities relevant to forensic evaluations conducted under M.G.L. c. 123, § 35 as may be required by the Assistant Commissioner;

(d) has participated in such quality improvement programs as may be required by the Assistant Commissioner; and

(e) continues to be employed by the Department, or employed under a contract managed by the Department to perform evaluations for the Court pursuant to M.G.L. c. 123, § 35.

(7) Transitional Provision/Waiver.

(a) A Social Worker who, as of July 1, 2014, was a Department employee or working under a contract managed by the Department in a court clinic, has demonstrated extensive experience in participating in court-ordered statutory and non-statutory evaluations, and who has participated in Department education activities relevant to forensic evaluations conducted under M.G.L. c. 123, § 35 shall be conditionally designated as a Qualified Social Worker; provided, however, such Social Worker shall participate in supervision and continuing education activities as may be required by the Assistant Commissioner until such time as the Assistant Commissioner determines that such Social Worker meets the requirements for designation in 104 CMR 33.04(3).

(b) A Social Worker, licensed psychologist or licensed physician with extensive experience in court evaluations and evaluations of substance use disorders may apply for, and at the discretion of the Assistant Commissioner, may be granted a waiver of any of the requirements established under 104 CMR 33.04(2). The Assistant Commissioner shall determine on an individual basis which requirements for designation may be waived.

33.05: Termination of Candidacy; Denial or Revocation of a Certification, Designation, or Appointment.

(1) The Assistant Commissioner may deny the application or terminate the candidacy of any person who is a candidate for designation as Designated Forensic Psychiatrist or Designated Forensic Psychologist designated pursuant to 104 CMR 33.03(3) or (8), designation as a Qualified Social Worker, or certification as a CJCC I or CJCC II pursuant to 104 CMR 33.03(14) for good cause, which may include, but is not limited to, failure to successfully complete the applicable approved training for designation or certification or to meet the other requirements for designation or certification within such time for completion as the Assistant Commissioner may have authorized, or disciplinary action against the person by the applicable licensing authority. The termination of candidacy shall not be subject to appeal.

(2) The Assistant Commissioner may revoke the designation or certification, or deny a request to renew the designation or certification of any person who has been designated as a Designated Forensic Psychiatrist or a Designated Forensic Psychologist, a Qualified Social Worker, or certified as a CJCC I or CJCC II for good cause, which may include, but is not limited to, performance of work that is no longer at a level of quality acceptable to the Assistant Commissioner, or disciplinary action against the person by the applicable licensing authority.

(3) Written notice of the Assistant Commissioner's intent to terminate a person's candidacy for designation or certification, revoke a person's designation or certification, or deny a request to renew a person's designation or certification, stating in general terms the basis for the decision, shall be sent by certified mail to the last known address of the person at least ten calendar days prior to the effective date of the revocation or termination, as applicable.

(4) Any DFP or CJCC who is denied renewal, or who receives notice of revocation of DFP or CJCC designation or certification, may request a hearing before a hearing officer appointed by the Commissioner no later than 20 calendar days after receipt of notice of such denial or revocation. Said hearing shall be conducted in a manner consistent with M.G.L. c. 30A, and shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure at 801 CMR 1.02: *Informal/Fair Hearing Rules*.

(a) If such a hearing is requested, the Assistant Commissioner may suspend a denial or revocation pending the outcome of the hearing.

(b) If a denial of renewal or revocation of designation or certification is not suspended pending the outcome of the hearing, or if the appeal concerns a denial of a requested designation or certification, the hearing shall commence within 30 calendar days of the effective date of the revocation, termination, or denial, or as soon thereafter as practicable.

(c) The burden of proof at any hearing held pursuant to 104 CMR 33.05 shall be on the appellant to establish that the decision of the Assistant Commissioner did not have a reasonable basis.

(d) The findings of fact in the recommended decision shall be binding on the Commissioner. The Commissioner may modify the conclusions of law and decision where the conclusions or decision are: in excess of the agency's statutory authority or jurisdiction; based on an error of law; arbitrary, capricious, or an abuse of discretion; or otherwise not in accordance with law.

(e) Within 15 days after receipt of the hearing officer's recommended decision, or as soon thereafter as practicable, the Commissioner shall issue a decision which shall be the final decision of the Department.

(5) Designation as a Designated Physician with authority to admit to a particular facility is subject to revocation in accordance with the standards and procedures established for medical staff appointments for that facility.

(6) Appointment as a Forensic Mental Health Supervisor pursuant to 104 CMR 33.03(12), or as a CJCC I or II Mentor pursuant to 104 CMR 33.03(17), may be revoked at the discretion of the Assistant Commissioner. Revocation of an appointment as a Forensic Mental Health Supervisor or as a CJCC I or II Mentor is not subject to appeal.

REGULATORY AUTHORITY

104 CMR 33.00: M.G.L. c. 123, §§ 1 and 2.