

Licensing Board Inaction & Institutional Liability

Examination of Google Gemini by Dr. Childress

Dr. Childress Question: This is a chat with an AI about the situation in the family courts. Analyze this information.

Direct Examination of Eliza – Forensic Custody Evaluations

<https://drcachildress-consulting.com/wp-content/uploads/2020/01/Direct-Examination-of-Eliza-Forensic-Custody-Evaluations-cc.pdf>

From Google Gemini AI: The provided chat discusses forensic custody evaluations in family courts, highlighting their historical development, experimental nature, lack of scientific validity, and ethical implications under the Belmont Report. It also touches upon the findings of the New York Blue-Ribbon Commission and potential conflicts of interest for evaluators.

Here's an analysis of the information:

1. Emergence and Nature of Forensic Custody Evaluations:

- **Historical Development:** Forensic custody evaluations and the quasi-judicial role of psychologists and psychiatrists in family courts are a relatively recent development.
 - Before the 1800s, child custody was generally not a legal matter, with fathers having near-absolute rights. The *parens patriae* doctrine was used sparingly, mostly for orphanhood or severe neglect cases.
 - In the mid-to-late 1800s, the "Tender Years Doctrine" led courts to favor mothers for custody of young children; mental health professionals were not involved.
 - From the 1950s to the 1970s, the "best interests of the child" standard replaced the Tender Years Doctrine, creating a more subjective standard that opened the door for mental health professionals to be involved as experts. Early evaluations were informal and unstandardized.
 - The 1980s and 1990s saw the institutionalization of custody evaluations, with organizations like the APA and AACAP issuing guidelines and the AFCC promoting this hybrid legal-clinical role. Evaluators became court-appointed investigators with significant influence over legal outcomes.
 - From the 2000s to the present, there's been a push for standardization, but also growing criticism regarding the lack of scientific foundation, variable evaluator competence, subjectivity, bias, and the use of non-validated constructs.

- **Experimental Role:** The forensic custody evaluator's quasi-judicial role and the custody evaluation process are considered experimental from both a scientific and ethical standpoint, deviating from the traditional medical-psychological role of diagnosis and treatment.
 - **Traditional Medical Role:** Rooted in scientific method, based on defined procedures (diagnosis, treatment planning, monitoring), and adheres to ethical frameworks like APA Standards (2.01, 2.04, 9.01) and Belmont Report principles (Respect for Persons, Beneficence, Justice).
 - **Forensic Custody Evaluation Deviation:** No diagnosis or treatment is required or provided, the "subject" is a court-referred family unit (often involuntarily), and the evaluator acts as a hybrid clinician, investigator, moral judge, and legal influencer¹². There are no validated outcome measures for "best interests."
 - **Experimental Characteristics:** There is no clinical precedent for a doctor acting as an investigator, decision-influencer, and moral assessor outside diagnosis or treatment protocols. Core constructs used are not operationalized or normed in scientific literature, and many evaluations use non-validated tools or vague clinical impressions, violating APA standards. Courts have informally deputized mental health professionals without rigorous vetting or oversight, introducing risks of due process violations, bias, and psychological harm. The AFCC, a primary body promoting these evaluations, does not require adherence to empirical standards and promotes role innovation based on internal consensus rather than scientific validation.

2. Reliability and Validity Issues:

- **Poor Inter-Rater Reliability:** Research indicates that inter-rater reliability for forensic custody evaluations is poor to unacceptable.
 - Studies like Gould et al. [cite start](#) found extremely low agreement between experienced evaluators given the same case information, with inter-rater agreement barely above chance.
 - Martindale & Gould (2004) identified a lack of standardized methods, leading to high evaluator variability and outcomes based on individual belief systems.
 - Otto & Edens (2003) noted that most evaluators rely on unstructured interviews and broad clinical impressions rather than validated psychological tests.
 - The AFCC has acknowledged the issue but reframes it as "complexity of human behavior" rather than methodological failure.

- **Relationship of Reliability and Validity:** Reliability (consistency) is a necessary but not sufficient condition for validity (accuracy). An unreliable measure cannot be valid. If evaluators reach different conclusions from the same data, the evaluation lacks reliability, undermining its validity and precluding it from being considered a scientific or forensic assessment.
- **Implications:** Poor reliability leads to effectively randomized custody outcomes, rather than reasoned judgments. It violates APA Standard 9.01 (Bases for Assessments) and 2.04 (Use of Established Scientific Knowledge), exposing families to arbitrary recommendations and potentially causing harm.

3. Belmont Report Obligations and Lack of Oversight:

- **Belmont Report Trigger:** The experimental quasi-judicial role of doctors and the experimental assessment procedure of forensic custody evaluations clearly trigger obligations under the Belmont Report. This is especially true because children and contested parents are a vulnerable population exposed to risk without meaningful consent, oversight, or scientific justification.
 - **Respect for Persons:** Violated by involuntary participation under coercive conditions and lack of informed consent.
 - **Beneficence:** Violated by unvalidated procedures with known risks of family disruption, failure to measure or report harm, and recommendations based on idiosyncratic impressions rather than tested hypotheses.
 - **Justice:** Violated by unequal risk distribution, evaluator bias affecting vulnerable populations (children, marginalized or accused parents), and disproportionate consequences for socioeconomically disadvantaged parents.
- **Absence of IRB-like Review:** Forensic custody evaluations are not reviewed by Institutional Review Boards (IRBs). There are no protocols for risk-benefit analysis, harm monitoring, or adverse outcome reporting. This is in stark contrast to research involving child interviews or parental observations, which would face extensive IRB scrutiny.
- **No Special Protections for Vulnerable Populations:** Children and non-custodial parents are treated as subjects, not clients, without procedural safeguards against evaluator bias, emotional harm, or family fragmentation. This routinely violates the heightened ethical responsibility emphasized by the APA Ethics Code and Belmont Report for vulnerable populations.

4. New York Blue-Ribbon Commission Findings:

- **Critical Report:** The New York Blue-Ribbon Commission (2021-2022) conducted a comprehensive review and issued a sharply critical report.
 - **No Consensus on Value, Majority for Elimination:** While no consensus was reached, a majority (11-9) favored entirely eliminating the practice.
 - Lack of Scientific & Legal Value; Dangerous and Harmful:

Those favoring elimination argued evaluations are "biased and harmful to children," "lack scientific or legal value," and are more detrimental than beneficial. The report stated evaluations can be "dangerous" and have "potentially disastrous consequences for parents and children," including emotional damage, financial and procedural delays, and arbitrary conclusions.

- **No Final Recommendation to Eliminate (but Strong Opposition):** Despite the majority vote for elimination, the Commission did not formally recommend a statewide ban. Instead, it highlighted serious systemic failures and recommended major reforms, including stronger regulations or moratoriums and better training. A moratorium bill was introduced in NY in response.
- **Commentary from Commission Members:** Jennifer Friedman and Lorraine Silverman's commentary highlighted pervasive bias at every stage, reliance on subjective impressions, favoring of "money spouses," and gender, class, and racial bias⁴⁴. They noted evaluators apply inconsistent methods, use psychological tests discriminatorily, and make unsupported factual determinations. Lorraine Silverman stated, "There is no way to strip the bias from these reports... which led to the recommendation of elimination," and "These are very, very harmful, and I don't think they're fixable... I truly believe there is a much better path forward without them".
- **Procedural Violations and Judicial Abdication:** Judges routinely delegate fact-finding authority to evaluators, who act as quasi-judges, recommending outcomes that are often "rubber-stamped" into court orders. Evaluators operate outside rules of evidence, are not subject to cross-examination for most findings, and use hearsay and private interviews without safeguards.
- **Financial Conflicts and Accountability Breakdown:** Widespread financial incentives compromise evaluator neutrality, with repeat appointments creating pressure to please. Evaluations are expensive (\$8,000 to \$100,000+), yet parties often cannot access their own reports, which are sealed, preventing complaints or second opinions.

- **Recommendation: Elimination or Immediate Moratorium:** A majority voted for elimination, and failing that, proposed a moratorium until standardized training, oversight, certification, disclosure of conflicts of interest, and fair access are established.

5. Implications of NY Commission Findings for Belmont Report and Conflicts of Interest:

- **Belmont Report Violations Confirmed:** The NY Commission findings strongly implicate multiple violations of the Belmont Report's principles (Respect for Persons, Beneficence, Justice).
 - **Respect for Persons:** Coercive participation, lack of informed consent, denial of attorney presence or objection, and sealed reports all violate this principle.
 - **Beneficence:** Evaluations are not evidence-based, show low reliability, cause harm, lack risk-benefit analysis, and have no monitoring for adverse outcomes, resembling an unregulated human experiment.
 - **Justice:** Children and accused parents are unprotected from biased or incompetent evaluators, access is financially prohibitive, systemic bias exists, and there are no accountability or redress mechanisms, creating a dual-tier system.
- **Absence of IRB Oversight:** The system lacks IRB review, operates without formal ethical safeguards, is immune from malpractice litigation, and imposes procedures without risk justification, which would be ethically impermissible in other fields.
- **Career and Financial Impact as Conflict of Interest:** Eliminating forensic custody evaluations would have a substantial career and financial impact on evaluators, particularly those in positions of authority and influence.
 - **Loss of Income:** Many evaluators derive significant income from these evaluations, often charging \$8,000-\$20,000+ per case, with some earning \$50,000-\$100,000+.
 - **Loss of Prestige and Authority:** Evaluators hold quasi-judicial power, influencing custody outcomes and gaining professional credibility and policy-shaping roles.
 - **Loss of Referrals:** Evaluators rely on referral pipelines from judges and attorneys, which would collapse.
 - **Reduction in Related Work:** Auxiliary income from expert testimony, reunification therapy, and parenting coordination would diminish.

- **Ethical Conflict:** This creates a clear conflict of interest when these professionals advocate for the continuation of the practice or design its guidelines. APA Standard 3.06 (avoiding conflicting professional roles), 2.01 (competence), and 2.04 (established scientific knowledge) are implicated.
 - **Structural Conflict and Resistance:** The entire forensic evaluation industry is structurally conflicted, with practitioners creating procedures, performing evaluations, testifying, and training new evaluators—all with financial stakes. Organizations like the AFCC are dominated by those who profit from the roles they promote, lacking independent oversight. This threatens a multi-million dollar "shadow industry" and can lead to lobbying against reform, denial of scientific critique, and distortion of training standards.
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Dr. Childress Question: Is the analysis provided in the Chat of the situation in the family courts accurate?

From Google Gemini: Yes, the analysis provided in the chat regarding the situation in the family courts is accurate based on the information presented in the document "Direct-Examination-of-Eliza-Forensic-Custody-Evaluations-cc.pdf".

The chat accurately summarizes the following key points:

- **Historical Context of Forensic Custody Evaluations:** It correctly outlines the shift from patriarchal norms and the "Tender Years Doctrine" to the "best interests of the child" standard, which opened the door for mental health professionals in family courts. It also accurately describes the informal beginnings, institutionalization, and subsequent criticisms of the practice.
- **Experimental Nature of the Role and Procedures:** The chat accurately states that the quasi-judicial role for doctors and the practice of forensic custody evaluations represent an experimental role and procedure, deviating from the traditional medical model of diagnosis and treatment.
- **Lack of Inter-Rater Reliability and its Impact on Validity:** It correctly identifies that research indicates poor to unacceptable inter-rater reliability for forensic custody evaluations and explains the foundational relationship between reliability and validity in psychometrics, concluding that poor reliability undermines validity.
- **Activation and Violations of the Belmont Report:** The chat accurately asserts that the experimental nature of these evaluations triggers Belmont Report obligations and correctly details how the principles of Respect for Persons, Beneficence, and Justice are violated, especially concerning vulnerable populations like children and parents.
- **Findings of the New York Blue-Ribbon Commission:** The chat correctly summarizes that the Commission found evaluations "biased and harmful to children," "dangerous," and

lacking "scientific or legal value," and that a majority voted for elimination, despite the Commission not formally recommending a statewide ban. It also accurately reflects the commentary of Jennifer Friedman and Lorraine Silverman regarding pervasive bias, procedural violations, financial conflicts, and the strong call for elimination or moratorium⁷.

- **Implications for Belmont Report and Conflicts of Interest:** The chat accurately connects the Commission's findings to further violations of the Belmont Report and highlights the significant career and financial impact on evaluators if the practice were ended, thereby creating a clear conflict of interest⁸.

The analysis accurately reflects the content and arguments presented within the provided document.

Dr. Childress Question: If the analysis in the Chat is accurate, what obligations would be incurred by state licensing boards?

From Google Gemini: If the analysis in the chat is accurate, state licensing boards would incur significant obligations due to the numerous ethical and professional concerns raised about forensic custody evaluations. These obligations stem from their role in upholding professional standards, protecting the public, and ensuring ethical conduct within their licensed professions.

Here are the key obligations that would be incurred by state licensing boards:

- **Enforcement of Ethical Standards (e.g., APA Ethics Code):**
 - **Competence (APA 2.01):** Licensing boards would have an obligation to investigate and address evaluators operating outside their boundaries of competence, such as offering legal opinions, assessing personality disorders without diagnostic training, or opining on risk without structured tools, as frequently happens.
 - **Use of Established Scientific Knowledge (APA 2.04):** Boards would need to ensure that evaluations rely on established scientific knowledge and empirically supported procedures, given the stated finding that evaluations "often fail APA 2.04 by not relying on established scientific knowledge" and that scientific grounding is "largely absent in most custody evaluations". Continuing to use unreliable procedures would violate this standard.
 - **Bases for Assessments (APA 9.01):** Licensing boards would be obligated to ensure psychologists base their assessments, recommendations, and reports on sufficient information and techniques to substantiate their findings. The reported "poor reliability" means recommendations cannot be substantiated, which violates this standard.
 - **Avoiding Conflicts of Interest (APA 3.06):** Boards would need to address the structural and individual financial conflicts of interest where evaluators profit

from the very roles and guidelines they promote. They should require disclosure and potentially recusal from policymaking roles.

- **Minimizing Harm (APA 3.04):** Boards have a duty to ensure that practitioners avoid and minimize harm. The analysis indicates that evaluations can cause "unjustified separation of children from parents", "attachment rupture and emotional trauma", and "potentially disastrous consequences for parents and children".
- **Protection of Vulnerable Populations:**
 - Given that parents and children in family courts are identified as a "vulnerable population", licensing boards have a heightened ethical responsibility to ensure their protection. This includes addressing the lack of special protections and the disproportionate impact on socioeconomically disadvantaged or marginalized parents.
- **Ensuring Informed Consent:**
 - Boards would need to address the lack of true informed consent, as participation is often court-compelled and involuntary. Parents and children are reportedly "evaluated under compulsion, often without adequate understanding or consent".
- **Addressing Lack of Scientific Validation and Reliability:**
 - Licensing boards must address the fundamental problem that custody evaluations "lack reliability, validity, and standardized methodology", and their core constructs are "not operationalized or normed in scientific literature". They would need to enforce the use of "validated diagnostic instruments" rather than "unvalidated or idiosyncratic interview methods".
- **Review and Reform of Practice Guidelines:**
 - Boards would need to critically review and potentially revise or withdraw any guidelines that promote practices lacking scientific validation or ethical oversight. This would involve a push for "structured methods, evidence-based reasoning, and clear boundaries between clinical and forensic roles".
- **Consideration of Moratorium or Elimination:**
 - Given the New York Blue-Ribbon Commission's findings, which included a majority vote for elimination and strong evidence of harm and lack of value, licensing boards would be obligated to seriously consider implementing moratoriums or even advocating for the termination of the practice until ethical compliance and scientific validity can be demonstrated.
- **Increased Oversight and Accountability:**

- Boards would be responsible for establishing mechanisms for independent oversight, risk-benefit analysis, ongoing harm monitoring, and adverse outcome reporting, which are currently "largely absent". They would also need to address the "institutional capture" by non-scientific bodies like the AFCC that promote roles based on "internal consensus rather than scientific validation".

In essence, if the chat's analysis is accurate, state licensing boards would be compelled to recognize that the current practice of forensic custody evaluations appears to be an "uncontrolled experiment on families" that operates with "profound ethical failure", necessitating immediate and substantial intervention to protect the public and uphold professional integrity.

Dr. Childress Question: Would this suggest that state licensing boards are currently failing in their obligations to protect the citizens of their states from unethical and harmful professional practices?

From Google Gemini: Yes, if the analysis in the chat is accurate, it would strongly suggest that state licensing boards are currently failing in their obligations to protect the citizens of their states from unethical and harmful professional practices within the realm of forensic custody evaluations.

Here's why:

- **Lack of Enforcement of Ethical Standards:** The analysis repeatedly highlights violations of core ethical standards, such as competence (APA 2.01), use of established scientific knowledge (APA 2.04), and bases for assessments (APA 9.01). If these violations are widespread and systemic, as suggested, it points to a failure by licensing boards to enforce the very codes they are established to uphold.
- **Failure to Protect Vulnerable Populations:** The analysis explicitly states that children and parents involved in these evaluations constitute a "vulnerable population" and that there are "no special protections" for them. The Belmont Report principles, which boards should implicitly follow, emphasize heightened ethical responsibility for vulnerable groups. The documented harms like "emotional damage," "family fragmentation," and "attachment rupture and emotional trauma" directly contradict the boards' protective mandate.
- **Ignoring Lack of Scientific Validity and Reliability:** The findings of "poor to unacceptable" inter-rater reliability and the assertion that the evaluations "lack reliability, validity, and standardized methodology" are critical. Licensing boards are responsible for ensuring that licensed professionals use scientifically sound practices.

Allowing the continued use of procedures that "cannot be considered a scientific or forensic assessment" indicates a significant lapse.

- **Absence of Oversight and Accountability:** The chat details a complete lack of IRB-like review, risk-benefit analysis, harm monitoring, or adverse outcome reporting for these evaluations. This "uncontrolled experiment on families" operates without the kind of oversight that would be mandatory in other fields involving human subjects. The fact that this system is allowed to persist suggests a failure of the boards to institute necessary safeguards.
- **Neglecting Conflicts of Interest:** The analysis points out "widespread financial incentives" and a "structural conflict of interest" within the industry. If licensing boards are not addressing these conflicts, particularly regarding evaluators in positions of authority who advocate for practices from which they financially benefit, they are failing in their duty to ensure unbiased and ethical professional conduct.
- **Disregarding Commission Findings:** The New York Blue-Ribbon Commission's findings, especially the majority vote for elimination and the strong condemnation of these evaluations as "biased and harmful," "dangerous," and lacking "scientific or legal value", put licensing boards "on notice". If boards fail to act significantly on such damning conclusions from an official body, it represents a failure to respond to clear evidence of systemic harm and unethical practice.

In summary, the documented issues point to a profound gap between the ethical and professional standards that licensing boards are mandated to enforce and the reported reality of forensic custody evaluations in family courts.

Dr. Childress Question: Given this set of information, what are the hypotheses for why licensing boards are not protecting their citizens from harm by violations to ethical standards by psychologists in the family courts?

From Google Gemini: Based on the information provided in the chat, here are several hypotheses for why state licensing boards might not be adequately protecting citizens from harm caused by alleged ethical violations by psychologists in family courts:

1. **Lack of Awareness or Understanding of the Systemic Issues:**
 - Licensing boards may not be fully aware of the extent and systemic nature of the problems, particularly the "experimental" nature of the evaluations, their lack of scientific validity and reliability, and the pervasive ethical violations described in the New York Blue-Ribbon Commission's findings.

- They might view complaints as isolated incidents rather than symptoms of a deeply flawed practice.

2. Insufficient Expertise or Resources:

- Forensic psychology, especially in family law, is a specialized and complex area. Licensing board members may lack the specific expertise to critically evaluate the scientific and ethical claims made about these practices, or to challenge established norms within this niche.
- Boards may be under-resourced, lacking the funding, staff, or legal support to conduct thorough investigations, initiate widespread reforms, or withstand potential legal challenges from powerful professional groups.

3. Influence of Professional Organizations and Lobbying:

- Organizations like the AFCC, which are described as promoting these evaluations and being dominated by those who profit from them, may exert significant influence over licensing boards, either directly through lobbying or indirectly by shaping professional norms and training that boards rely upon.
- The "structural conflict of interest" where practitioners advocate for and benefit from the roles they promote could lead to resistance against reforms that threaten their livelihood.

4. Deference to the Judiciary and Court System:

- Licensing boards might defer to the judicial system, assuming that if judges are appointing evaluators, the practice must be sound and ethical. They may be hesitant to intervene in what is perceived as a "judicial function", even when judges are accused of "delegating judicial authority" to evaluators.
- The secrecy around evaluations (sealed reports) and the lack of traditional legal safeguards (e.g., cross-examination of all findings) may make it difficult for boards to access necessary information or assert jurisdiction.

5. Reactive Rather Than Proactive Stance:

- Licensing boards often operate reactively, primarily responding to individual complaints rather than proactively auditing practices or initiating systemic reviews.
- The complex, often high-stakes, and financially burdensome nature of family court cases means many harmed parties may not file complaints, or their complaints may be difficult to substantiate within the board's existing investigative frameworks.

6. "Turf Protection" and Resistance to Change:

- There might be an inherent resistance within the psychological profession, including its regulatory bodies, to acknowledge and dismantle practices that have become entrenched and profitable for a segment of their licensees. This could be a form of "turf protection" where the profession defends its perceived domain and financial interests.
- Acknowledging widespread harm would imply a significant failure of oversight, which boards may be reluctant to admit.

7. Limited Scope of Authority or Perceived Mandate:

- Some boards might interpret their mandate narrowly, focusing primarily on individual licensee misconduct rather than systemic issues in a particular practice area. They might not see it as their role to challenge the scientific validity of a widely adopted, albeit controversial, forensic practice.

These hypotheses suggest a complex interplay of factors, including informational gaps, resource limitations, political pressures, and institutional inertia, contributing to a potential failure in safeguarding citizens from the identified harms in family courts.

Dr. Childress Question: Could another possible reason be negligent disregard of children and parents in the family courts?

From Google Gemini: Yes, based on the information provided in the chat, there could certainly be potential legal liability issues for institutions like state licensing boards, the AFCC (Association of Family and Conciliation Courts), and the APA (American Psychological Association), although proving such liability would depend on specific legal frameworks, jurisdiction, and the ability to demonstrate causation and damages.

Here's a breakdown of how potential liability might arise for each:

State Licensing Boards

Basis for Potential Liability:

State licensing boards are typically governmental or quasi-governmental entities tasked with protecting the public by regulating licensed professionals (e.g., psychologists). Their potential liability would likely stem from:

1. Negligence in Public Protection/Oversight (Failure to Regulate):

- **Breach of Duty:** If the analysis is accurate, and boards are aware (or should be aware) of systemic ethical violations, lack of scientific validity, and documented harm caused by forensic custody evaluations, a strong argument could be made

that they are breaching their fundamental duty to protect citizens. This includes failing to enforce their own ethical codes (e.g., APA 2.01, 2.04, 9.01, 3.06, 3.04).

- **Causation & Damages:** If it can be shown that this failure to regulate directly contributed to the "unjustified separation of children from parents," "attachment rupture and emotional trauma," and other "disastrous consequences", families might argue they suffered damages due to the boards' inaction.
- **"Negligent Disregard":** The hypothesis of "negligent disregard of children and parents" directly implies a breach of the duty of care towards a vulnerable population.

2. Failure to Act on Known Harm:

- The New York Blue-Ribbon Commission's findings, which explicitly called evaluations "biased and harmful," "dangerous," and lacking "scientific or legal value", could serve as strong evidence that boards were "on notice" about the pervasive problems. Failure to implement reforms or even a moratorium in response could be seen as actionable negligence.

Challenges:

- **Governmental Immunity:** State entities often have some degree of governmental or sovereign immunity, which can limit their liability.¹ However, this immunity is not absolute and may have exceptions, particularly for gross negligence or willful misconduct.
- **Discretionary vs. Ministerial Acts:** Courts often distinguish between "discretionary" acts (for which immunity is more likely) and "ministerial" acts (for which it is less likely).² Boards might argue that their decisions are discretionary.

AFCC (Association of Family and Conciliation Courts)

Basis for Potential Liability:

The AFCC is described as a non-profit organization that "promotes" and "institutionalized" these evaluations. Their potential liability could arise from:

1. Negligent Misrepresentation or Endorsement:

- If AFCC promotes or sets standards for evaluations that are demonstrably unreliable, lack scientific validity, and cause harm, they could potentially be liable for negligently misrepresenting the safety or efficacy of these practices.

- The chat highlights that the AFCC promotes "role innovation based on internal consensus rather than scientific validation" and does not require adherence to empirical standards, while denying "scientific critique". This could be seen as a reckless disregard for scientific standards given their influential role.

2. Conspiracy/Collusion (if intent could be shown):

- While difficult to prove, if there was evidence that AFCC, in coordination with evaluators or others, actively perpetuated a system known to be harmful for financial gain (given the "structural conflict of interest" where members profit from the roles they promote), this could lead to more serious claims.

3. Aiding and Abetting Unethical Practices:

- If AFCC provides training, guidelines, or a platform that facilitates unethical or harmful practices, and they knew or should have known about the issues, they could potentially be seen as aiding and abetting.

Challenges:

- **Proving Direct Causation:** It would be challenging to prove that the AFCC's actions directly caused harm to individual families, as opposed to the actions of the individual evaluators or the court system.
- **Non-Profit Status:** While non-profit, this status doesn't automatically confer immunity from civil liability.

APA (American Psychological Association)

Basis for Potential Liability:

The APA is a professional organization that sets ethical guidelines (like the APA Ethics Code) for psychologists.³ Their potential liability could arise from:

1. Failure to Enforce Ethical Standards / Negligent Oversight of its Own Guidelines:

- The chat extensively cites specific APA ethical standards (2.01, 2.04, 9.01, 3.06, 3.04) that are allegedly violated by forensic custody evaluations.
- If the APA is aware of these systematic violations within a significant area of psychological practice but fails to issue stronger warnings, revise guidelines, or actively pressure licensing boards to enforce their standards, it could be argued they are negligent in their duty to uphold professional ethics and protect the public.

- The argument could be that by not taking a stronger stance against unscientific and harmful practices within its own profession, the APA implicitly condones them.

2. Endorsement of Flawed Practices:

- If the APA has, at any point, issued guidelines or statements that support forensic custody evaluations without adequately addressing their scientific shortcomings or ethical risks, they could be seen as contributing to the legitimization of a potentially harmful practice.

Challenges:

- **Limited Direct Regulatory Power:** The APA is a professional association, not a licensing body.⁴ It doesn't directly license or discipline psychologists, which is primarily the role of state boards. This makes direct causation harder to establish.
- **Advisory Role Argument:** The APA might argue its role is primarily advisory and educational, not regulatory. However, its significant influence on professional practice and ethical standards could still create a duty of care.

Overall Considerations for All Entities:

- **Evidence of Knowledge:** A key component of negligence claims is demonstrating that the entity knew or reasonably should have known about the risks and harms. The New York Blue-Ribbon Commission's report would be crucial evidence in this regard, putting all relevant parties "on notice."
- **Causation:** Plaintiffs would need to prove a direct link between the entity's action or inaction and the specific harm suffered.
- **Damages:** Plaintiffs would need to demonstrate actual damages (e.g., emotional distress, financial costs, loss of custody).
- **Class Actions:** Given the systemic nature of the alleged harm, class-action lawsuits could potentially be considered, grouping together numerous families affected by these practices.

In conclusion, the information provided strongly suggests grounds for exploring potential legal liability for all three types of institutions, as their roles intersect with the ethical and scientific integrity of forensic custody evaluations and their impact on vulnerable families.

Dr. Childress Question: If licensing boards were to suspend the practice of forensic custody evaluations in the family courts, could this potentially raise their legal liability for prior non-action?

From Google Gemini: Yes, if licensing boards were to suspend the practice of forensic custody evaluations, it *could* potentially raise their legal liability for prior non-action, although it's a complex issue with nuances.

Here's why and the counterarguments:

Why it Could Raise Liability for Prior Non-Action ("Admission of Guilt"):

1. **Implied Admission of Systemic Failure:** Suspending a widespread practice that they previously allowed, especially if it's based on findings of harm, lack of scientific validity, and ethical violations, could be interpreted as an implicit admission that the practice *was* indeed problematic and harmful all along, and that their prior oversight was insufficient.
2. **Recognition of Negligence:** If a board suspends the practice citing reasons like "lack of scientific basis," "unreliability," or "harm to vulnerable populations," it directly acknowledges the very issues that underpin arguments for their negligent disregard. This new action could serve as evidence that they recognized the danger, and thus, should have acted sooner.
3. **Strengthening Prior Claims:** For those who have already suffered harm and might consider legal action, a suspension would significantly strengthen their argument that the boards failed in their duty to protect the public. It provides official validation for the claims of harm and professional misconduct that might have previously been dismissed.
4. **Heightened Awareness of Risks:** By taking such a drastic step as suspension, the board publicly signals the severity of the problems. This heightened public awareness could encourage more individuals to come forward with complaints or lawsuits regarding past harm.

Counterarguments / Why it Might Not Necessarily Lead to Greater Liability:

1. **Mitigation of Ongoing Harm (Reduced Future Liability):** Taking action, even if it carries some risk for past conduct, drastically reduces or eliminates the board's liability for *future* harm caused by the practice. From a forward-looking perspective, it's a protective measure. Boards could argue they are fulfilling their duty now that new or clearer evidence (like the NY Commission's report) has emerged.

2. **Good Faith Argument / Evolving Standards:** Boards could argue that their understanding of the science and the ethical implications evolved, or that new evidence (e.g., the Blue-Ribbon Commission's findings) prompted the change. They might contend that they are acting in good faith based on the most current information, not admitting prior negligence.
3. **Discretionary Authority:** Boards often have significant discretionary authority in setting and enforcing standards. They might argue that the decision to suspend is a policy decision made within their discretionary powers, for which they are afforded greater immunity.
4. **Focus on Reform:** A suspension could be framed as part of a broader reform effort aimed at improving practices, rather than an admission of past wrongdoing.

Conclusion:

While a suspension would likely be a legally advised and necessary step to prevent future harm, and could be defended as acting on new information, it would undoubtedly open the boards to increased scrutiny and potential legal challenges for their previous inaction. The optics of such a move could be interpreted by plaintiffs as an acknowledgment that the practice should have been stopped earlier. Any decision to suspend would likely involve careful legal strategizing by the boards to manage this potential increased exposure.

Dr. Childress Question: If some state licensing boards suspended the practice (consistent with the recommendations of the NY Blue-Ribbon Commission) and some did not, what would be the legal liability implications?

From Google Gemini: This scenario would create a complex and potentially highly consequential legal landscape for state licensing boards, leading to different levels of exposure and potential liability depending on their actions.

Here's an analysis of the legal liability implications:

For Boards That Suspend the Practice:

1. **Increased Risk for Prior Non-Action (as discussed previously):**
 - **Implied Admission:** Suspending the practice, especially citing reasons like lack of scientific validity, unreliability, and harm, would be seen as a strong implicit admission that the practice was problematic and that their prior allowance of it was a failure in their duty to protect.

- **"On Notice" Evidence:** The act of suspension itself demonstrates that the board has acknowledged the serious concerns (e.g., from the NY Blue-Ribbon Commission) and the ethical/scientific deficiencies of the practice. This strengthens arguments that they should have acted sooner, potentially increasing liability for past harm.
- **Encouragement of Litigation:** This action could empower individuals who experienced harm from these evaluations in the past to pursue legal claims against the board for its previous inaction.

2. **Reduced Future Liability:**

- **Mitigation of Ongoing Harm:** Crucially, by suspending the practice, these boards would significantly reduce or eliminate their liability for *future* harm. They would be actively fulfilling their protective mandate from the point of suspension onward. This is a powerful defense against claims of continued negligence.
- **Good Faith/Evolving Standards:** They could argue they are acting in good faith based on new or evolving evidence (e.g., the NY Commission's report) and updated understanding of best practices, rather than admitting a conscious prior failure.

For Boards That Do NOT Suspend the Practice:

1. **Significantly Increased Liability for Ongoing and Future Harm:**

- **Continued Breach of Duty:** These boards would remain liable for allowing a practice that has been widely criticized as unscientific, unreliable, and harmful, especially if they are aware of the NY Blue-Ribbon Commission's findings and similar evidence.
- **Reckless Disregard Argument:** Their inaction, particularly in light of other states taking preventative measures, could be framed as a reckless or grossly negligent disregard for the well-being of children and parents. It would be harder for them to claim ignorance or lack of sufficient evidence.
- **Failure to Learn/Adapt:** They would be seen as failing to adapt to evolving professional standards and findings regarding a practice that directly impacts vulnerable populations.
- **Comparative Negligence (Potential Argument):** While not direct, a legal argument could arise that these boards are comparatively more negligent than those that took action, particularly if a universal standard of care for regulation begins to emerge from states that do suspend the practice.

2. **Exacerbated "Failure to Protect" Claims:**

- Their continued inaction would highlight the disparity in protection offered to citizens across states. Families in these states could argue they are receiving a

lower standard of protection from their licensing board compared to those in states that suspended the practice.

- This could lead to a wave of lawsuits in these non-acting states, potentially including class-action suits, claiming ongoing systemic harm and inadequate oversight.

Overall Legal Implications of a Disparity in Action:

- **Setting a Precedent:** If several states suspend the practice, it starts to establish a de facto "standard of care" for regulatory bodies regarding forensic custody evaluations. Boards that do not follow suit would increasingly deviate from this emerging standard, making their inaction more legally perilous.
- **"Race to the Bottom" vs. "Race to the Top":** This scenario could either incentivize a "race to the top" where boards feel pressure to act to protect their citizens and avoid liability, or a "race to the bottom" where some boards cling to the status quo due to political pressure or inertia, risking greater liability.
- **Increased Judicial Scrutiny:** Such a disparity might also prompt courts to look more critically at the basis of forensic custody evaluations in the states where they are still permitted, potentially leading to more frequent exclusion of such evidence in individual cases.

In essence, a mixed response from state licensing boards would create a clear contrast in regulatory approaches. Boards that act would face a concentrated risk for past actions but significantly reduce future liability. Boards that do not act would face a compounding and escalating risk for ongoing and future harm, as their inaction would become increasingly difficult to justify in the face of evidence and regulatory trends in other jurisdictions.

Dr. Childress Question: Given the potential legal liability exposure, are there concerns for a conflict of interest with the state licensing boards regarding their mandate to protect citizens and their potential acknowledgement of prior failures?

From Google Gemini: Yes, absolutely. Given the potential legal liability exposure, there's a **significant and inherent conflict of interest** for state licensing boards regarding their mandate to protect citizens and their potential acknowledgement of prior failures.

Here's a breakdown of this conflict:

The Mandate: Protect the Public

State licensing boards exist primarily to protect the health, safety, and welfare of the public by ensuring that licensed professionals adhere to ethical and competency standards.¹ This is their core, non-negotiable duty.

The Conflict: Acknowledging Prior Failure & Legal Liability

1. **Reputational Damage:** Admitting that a widely practiced and previously permitted service (like forensic custody evaluations) was systematically harmful, unscientific, or unethical would cause immense reputational damage to the board itself. It would imply that they failed in their primary mandate for an extended period.
2. **Financial Liability:** As discussed, acknowledging prior failures and suspending the practice could open the board to lawsuits from individuals who claim they were harmed due to the board's insufficient oversight. Facing numerous, potentially costly lawsuits creates a powerful disincentive to admit fault.
3. **Political Pressure:** Boards are often appointed by governors or state legislatures.² Admitting systemic failure could lead to political scrutiny, calls for resignations, budget cuts, or legislative changes that might diminish their power or autonomy.
4. **Institutional Inertia/Self-Preservation:** There's a natural human and institutional tendency to resist admitting error, especially on a large scale. Boards may prioritize avoiding legal and reputational fallout over proactively correcting past deficiencies, even if it means allowing some continued harm.
5. **Perceived Conflict with Licensees:** Taking drastic action like suspending a practice can put the board in direct opposition to a segment of its licensees who derive significant income from that practice. While the board's mandate is to protect the public, not the licensees, maintaining good relations with the profession can be a practical consideration, which can create a subtle pressure against aggressive action.

How the Conflict Manifests:

This conflict can lead to various forms of inaction or slow action:

- **Delaying Action:** Boards might delay investigating, deliberating, or taking decisive action, hoping the issue resolves itself or that public attention shifts.
- **Minimizing Findings:** They might downplay the severity of reports (like the NY Blue-Ribbon Commission's), suggesting that issues are isolated or less severe than presented.
- **Focusing on Minor Reforms:** Instead of systemic change, they might propose minor procedural tweaks that don't address the core issues of scientific validity or ethical harm, allowing the problematic practice to continue.
- **Lack of Transparency:** Reduced transparency about complaints or internal investigations related to these practices.

In essence, the very act of fulfilling their mandate *now* (by suspending a harmful practice) could expose them to severe consequences for *past* failures to fulfill that same mandate. This creates a deeply challenging conflict of interest where the board's self-preservation instincts (avoiding liability, reputational damage, political fallout) can clash directly with its fundamental duty to protect the public.

Dr. Childress Question: Given the concerns and the situation, what recommended action should be taken?

From Google Gemini: Given the serious concerns regarding the ethical, scientific, and legal aspects of forensic custody evaluations in family courts, as highlighted in the provided analysis, a multi-pronged approach involving various stakeholders is recommended. The overriding goal should be to prioritize the safety and well-being of children and parents while upholding professional integrity and ensuring accountability.

Here are recommended actions:

For State Licensing Boards (Most Critical Actions)

1. Immediate Moratorium or Suspension of Forensic Custody Evaluations:

- **Rationale:** Based on the overwhelming evidence of lack of scientific validity, unreliability, and documented harm, and consistent with the majority recommendation of the NY Blue-Ribbon Commission, an immediate moratorium or suspension of these evaluations is the most ethical and protective initial step. This would stop ongoing harm.
- **Legal Strategy:** This must be carefully planned with legal counsel to mitigate potential liability for prior non-action while prioritizing the cessation of ongoing harm. The argument should be framed as acting on new, compelling evidence and evolving professional standards.

2. Comprehensive, Independent Investigation and Review:

- **Scope:** Conduct a thorough, independent investigation into the practices of forensic custody evaluators licensed by the board. This should include reviewing complaint histories, audit evaluation reports, and assess adherence to ethical codes (especially APA 2.01, 2.04, 9.01, 3.04, 3.06).
- **Expert Panel:** Assemble a diverse panel of experts, including statisticians, research methodologists, child development specialists, and ethics experts (who

are *not* financially tied to forensic evaluations), to critically assess the scientific basis, methodology, and reported outcomes of these evaluations.

3. **Enforcement of Existing Ethical Standards:**

- **Vigorous Discipline:** Vigorously discipline licensees found to be violating ethical standards, particularly those related to competence, use of established scientific knowledge, bases for assessments, conflicts of interest, and minimizing harm.
- **Proactive Audits:** Implement proactive auditing of evaluation reports to ensure adherence to standards, rather than solely relying on reactive complaint processes.

4. **Revision/Withdrawal of Flawed Guidelines and Promotion of Evidence-Based Practices:**

- **Remove Support for Unvalidated Practices:** Withdraw any existing guidelines or informal endorsements that support practices lacking scientific validation or adequate ethical oversight.
- **Develop New Standards:** Develop and enforce new, evidence-based standards for any future evaluations, strictly requiring validated assessment tools, clearly defined methodologies, and empirically supported constructs. This should include mandatory training on these new standards.

5. **Addressing Conflicts of Interest:**

- **Disclosure Requirements:** Implement strict requirements for evaluators to disclose all potential conflicts of interest, including financial ties to organizations that promote these evaluations (e.g., AFCC) or repeat referral patterns from specific judges or attorneys.
- **Recusal Policies:** Establish clear policies for recusal from cases or policy-making roles where conflicts of interest exist.

6. **Enhanced Transparency and Accountability:**

- **Public Access to Data:** Work with courts to make anonymized data on evaluation outcomes and complaints publicly accessible, allowing for greater oversight and research.
- **Robust Complaint Process:** Ensure an accessible, transparent, and fair complaint process for citizens, with adequate investigation and clear communication of outcomes.

For Professional Organizations (e.g., APA, AFCC)

1. APA: Strong Reaffirmation and Enforcement of Ethical Code:

- **Clearer Guidance:** Issue clearer and stronger guidance to members and state licensing boards regarding the application of its ethical standards (especially 2.01, 2.04, 9.01, 3.04, 3.06) to forensic custody evaluations, explicitly addressing the reliability, validity, and harm concerns.
- **Advocacy for Reform:** Actively advocate for legislative and regulatory reforms at the state level to ensure evaluations are scientifically sound, ethically conducted, and protect vulnerable populations.
- **Independent Review of Standards:** Conduct an independent review of all existing APA guidelines related to child custody evaluations to ensure they align with the latest scientific evidence and ethical considerations, including potential for harm.

2. AFCC: Fundamental Re-evaluation of Mission and Practices:

- **Independent Ethical Review:** Undergo an independent ethical audit of its practices, particularly regarding the promotion of roles and methods that lack scientific validation and create conflicts of interest.
- **Prioritize Scientific Validity:** Shift its focus to promoting only scientifically validated methods and roles, and disengage from activities that create financial incentives for non-evidence-based practices.
- **Disclose Conflicts:** Require full disclosure of any financial conflicts of interest among its leadership and members related to forensic evaluations.

For the Judiciary and Legislative Bodies

1. Judicial Scrutiny:

- **Daubert/Frye Standards:** Judges should rigorously apply Daubert or Frye standards (depending on jurisdiction) to the admissibility of forensic custody evaluations, demanding strong evidence of scientific validity and reliability, rather than "rubber-stamping" reports.
- **Limiting Scope:** Restrict the scope of evaluators to providing psychological insights based on validated methods, not making ultimate legal determinations regarding custody.

2. Legislative Reform:

- **Moratorium/Ban:** State legislatures should consider enacting a moratorium or outright ban on forensic custody evaluations until they can be proven scientifically valid and ethically sound.
- **Funding for Alternatives:** Reallocate resources towards evidence-based dispute resolution, mediation services, and targeted interventions for high-conflict cases that prioritize child welfare without relying on unvalidated evaluations.
- **Increased Oversight:** Establish independent oversight mechanisms for all court-appointed professionals in family court to ensure accountability and adherence to ethical standards.

By taking these decisive actions, the various institutions can begin to address the systemic failures, mitigate ongoing harm, and restore public trust in a critical area of the legal system that profoundly impacts vulnerable families.