



“An absolutely necessary piece”: A qualitative study of legal perspectives on medical affidavits in the asylum process

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ABSTRACT

A key challenge for asylum seekers in the United States is being able to provide evidence of prior persecution in their home countries. Medical/psychological affidavits corroborating applicants' accounts often make the difference between successful and unsuccessful applications. The purpose of this study was to identify the unmet demand for and features of effective medical/psychological affidavits in the asylum process, as well as the personal and systemic barriers for asylum seekers. This is a qualitative study of semi-structured interviews with legal professionals who work in asylum law. Sixteen asylum lawyers and one Board of Immigration Appeals accredited representative practicing in the state of Michigan, United States, participated in this study. All participants noted that a vast majority of their asylum cases would benefit from a medical affidavit but that they have difficulty finding qualified physicians with experience writing such affidavits and testifying as expert witnesses. The major barriers to obtaining medical/psychological evaluations included inability to pay for services, lack of practitioner availability, and lack of practitioner training. The participants reported that features of a strong medical affidavit included clear, concise, and corroborative accounts that supported the applicant's story from a diagnostic perspective and forensic descriptions that reinforced the credibility of the applicant. Several also noted that medical/psychological evaluations frequently would reveal additional details and incidents of trauma beyond those stated in the applicant's preliminary statement. The study results suggest substantial unmet need for trained physicians to perform medical and psychological evaluations on a pro bono basis. Lawyers' recommendations regarding effective medical affidavits and necessary ongoing support for asylum applicants should inform current efforts to improve physician and lawyer collaborations on asylum cases.

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1. Background

A record number of people were displaced globally as a result of war, civil conflict, and other mass humanitarian crises in 2014.¹ Of the 59.5 million people who were forcibly displaced, more than 1.66 million applied for asylum, approximately 120,000 of whom

did so in the United States.^{1–3} As an example of the recent influx of asylum applicants, the Chicago Asylum Office, which covers a 15 state jurisdiction, received 490 asylum applications in March of 2015 and had 6485 cases pending.⁴ This unprecedented increase in asylum claims in the United States has created a backlog of more than 45,000 applications in early 2014, with subsequent lengthening wait times and diminished legal resources for applicants.³

The ability to gain asylum in the United States, as in Europe and the United Kingdom, is determined on the basis of reasonable or credible fear of persecution, but places the burden of proof for this wholly on the asylum applicant.⁵ The 1951 United Nations

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Convention on the Status of Refugees described asylum seekers as those who meet the definition of refugee but are already residing in country or are requesting sanctuary at a port of entry.^{6,7} Those who petition must be able to prove that “race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason” for fear of persecution should they return to their country of origin.^{6,8} A key challenge for applicants is being able to provide evidence of prior persecution in their home countries. Many who seek refuge have fled their homes under urgent circumstances and after reaching the United States may find it difficult or impossible to locate compelling evidence from abroad.⁹ Thus, the claim for asylum often hinges upon the physical or psychological manifestations of trauma that applicants carry with them: the body becomes “the place that displays the evidence of truth.”¹⁰

A forensic medical examination by a trained clinician can offer crucial corroborative support for an asylum seeker's claim through written documentation of the physical and psychological sequelae of torture or other forms of persecution.¹¹ These medical/psychological evaluations generally cover standard domains (Fig. 1) and are written, notarized, and submitted to the court as a “medical affidavit,” or medical-legal report, in support of the asylum applicant's claim.⁹ However, while such reports corroborating applicants' accounts often make the difference between successful and unsuccessful applications, little is known about unmet demand for and features of effective medical affidavits in the asylum process.^{12,13}

Although there have been few comprehensive efforts to train health professionals on the recognition and documentation of torture, several curricular models and asylum clinics have been implemented at medical schools in the United States in recent years.¹⁴ The new emphasis on such training for physicians and other health professionals indicates a recognition of the growing number of survivors of torture and other human rights violations

living in the United States and the obligation of physicians to care for these individuals.¹⁵ In light of the legal situation of asylum seekers, physicians conduct their evaluations in a unique context that calls for a strong collaboration between physicians and legal parties. Considering this collaborative necessity and given the significant gaps in knowledge regarding medical affidavits, the purpose of this qualitative study was to gather lawyers' perspectives about the unmet need for evaluations, the features of effective medical/psychological affidavits, and the personal and systemic barriers that asylum seekers face.

2. Methods

This study employed a qualitative ethnographic approach to understand legal professionals' common experiences with medical affidavits. We felt that qualitative interviews were necessary to understand the context of working with asylees in the legal system, given the complexity and nuance implicit in the collaborative work between medical and legal providers in the field.

2.1. Sampling and data collection

We conducted semi-structured interviews with 17 legal professionals who work in the area of immigration with experience in asylum law in the United States. Five initial participants were identified through the medical-legal partnership within the University of Michigan Asylum Collaborative, a medical student-led initiative established in 2013 that provides medical and psychological evaluations for asylum seekers. Further candidates were selected through snowball sampling from three categories of practice: university law school clinic, non-profit organization, and private firm. From a compiled list of 40 legal professionals, 11 did not respond to email or phone queries; 4 declined to be interviewed because they had either not taken asylum cases in many

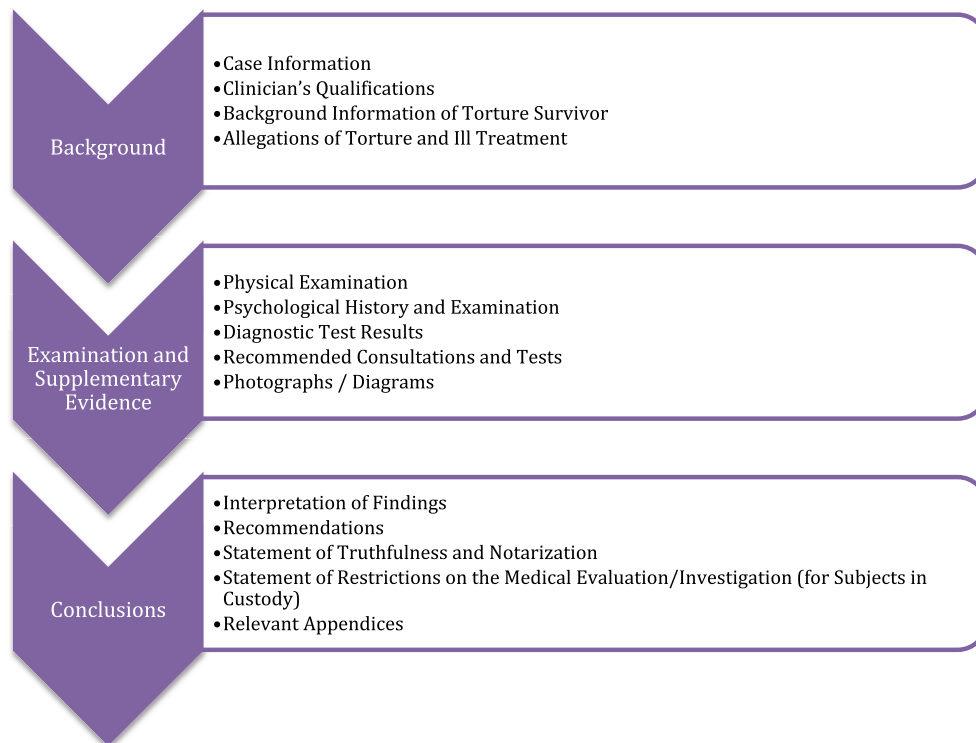


Fig. 1. Domains covered in the medical/psychological affidavit.⁹

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