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Psychological Evaluations for Legal Proceedings

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What is Psychology?

The scope of the professional practice of psychology is broad but emphasizes evaluation and treatment. Psychology is a behavioral science and can be defined as “the scientific study of human behavior and cognitive and emotional processes.” Behavior refers to physical actions that can be observed while mental processes pertain to emotions, thoughts, decision making, problem-solving, perception and mood.

What is a Psychologist?

The American Psychological Association reserves the title “Licensed Psychologist” for individuals who complete a doctoral degree (either a Ph.D. or Psy.D.) with specialized course-work including psychological testing, psychopathology and abnormal psychology, biological bases of behavior, personality theory, research

methods and statistics, psychopharmacology, childhood development and other specialized areas within psychology. A doctoral degree usually requires 5-7 years of post-graduate study. Becoming a licensed psychologist in any of the core speciality applied areas, e.g. clinical, counseling, neuropsychology also requires an internship (e.g. hospital, community clinic, prison) followed by post-doctoral training of 1-2 years in the setting of choice, (e.g. medical or forensic) for one’s future career. Licensing as a psychologist requires passing a rigorous and comprehensive written and oral examination taken in the state where one plans to practice. There are many different settings in which professional psychologists are employed including medical, forensic, university and corporate/ industry. Some psychologists choose to develop a private practice.

The difference in training be-

tween a psychiatrist and psychologist, which is sometimes confused by the public, is that psychiatrists attend medical school and complete a medical degree (M.D.) while psychologists complete a Ph.D. or Psy.D. which is a behavioral science degree with emphasis on the evaluation and/or treatment of human behavior (e.g. depression, anxiety and other disabling conditions). In some states (e.g., Idaho, Illinois, Iowa, New Mexico, Louisiana) and portions of the military psychologists with additional training can prescribe psychoactive medications. In many hospital settings psychologists collaborate in medication decision making. (American Psychological Association, 2011). Psychologists typically have expertise in psychological testing and assessment while psychiatrists have expertise with and often focus on medication management. Despite the differences there is often great over-

lap in the nature of the work that psychologists and psychiatrists do and both professions can frequently be found working together on a team in various professional settings.

What is Forensic Psychology?

Division 41 of the American Psychological Association is the American Psychology-Law Society division whose members have a specialty focus on legal and forensic applications. Division 41 defines forensic psychology as follows:

“Professional practice within the area of clinical, counseling or neuropsychology where psychologists with forensic training are engaged regularly as experts and represent themselves as such, in an activity primarily intended to provide professional psychological expertise to the judicial system.”

According to the American Board of Forensic Psychology, which is a higher-level specialty credentialing body, forensic psychology is the application of the science and profession of psychology to questions and issues relating to law and the legal system. Many psychologists who practice in forensic psychology bring wisdom and expertise with them accumulated over many years of applied clinical psychology work although forensic psychology specialty graduate programs have recently been increasing in numbers. The word “forensic” comes from the Latin word “forensic,” meaning “of the forum” where the law courts of ancient Rome were held. In contemporary society forensic psychology is a specialized branch of clinical psychology that relates to issues that connect psychology with the law and can be very broad to include work that pertains to an array of professional activities carried out by psychologists which may occur either within criminal or civil arenas. For example, referral questions/requests by an attorney or by the court system to the psychologist may pertain to mitigating factors, jury selection, parental fitness, cognitive or mental harms suffered following some form of trauma within personal

injury lawsuits, personality assessment and malingering, workplace violence risk appraisal, expert witness testimony, testamentary capacity, sex offender recidivism evaluation, personnel selection for law enforcement and diagnostic clarification, to name just a few. Immigration law is another specialty category that I have previously written about examining the contribution that psychological evaluations can make pertaining to asylum, U-Visa and domestic abuse hardship determinations (Ackerman & Williams, 2013).

How can a forensic psychologist assist me in my work as an attorney?

Forensic psychologists may be contacted by an attorney or the court system to take on the role of evaluating individuals facing criminal charges pertaining to psychological, behavioral or cognitive issues related to the charges. There should always be a referral question from the attorney (e.g. “Is the examinee competent to stand trial, does examinee understand the legal charges?” or “Is this individual likely to recidivate?”). Individuals may also contact a psychologist directly to discuss the need for an evaluation concerning a civil case. Completed forensic evaluations should be objective with conclusions based on information obtained through observation, clinical interview, affidavits received from third-party informants or collateral interviews, psychological test results, questionnaires completed by the examinee, review of medical, psychiatric and psychotherapy records, employment documents, police reports and jail records where applicable. The final report should answer the referral question in an unbiased manner and be based on the data collected with the ultimate goal of assisting the trier of fact. Therapeutic reports and forensic psychological evaluations therefore have very different goals and are designed quite differently. For example, while therapeutic reports focus on the health and adjustment of the examinee and usually include

treatment recommendations with the ultimate goal of alleviating emotional distress, forensic psychological evaluations typically address specific and more narrow referral questions and focus on how one or more aspects of the examinee’s functioning are related to the legal charges (Otto, Demier & Boccaccini, 2014). Psychologists are uniquely positioned to assist the courts in this manner as our training emphasizes assessment of human behavior in addition to foundational course-work in research methodology and statistical analysis. All psychologists are trained in critical thinking and most forensic psychologists are well-versed in Daubert criteria and are familiar with the court system and legal standards. Besides assisting with an understanding of the relevant psychological issues of a legal case psychologists may also be retained by attorneys to review documents or to provide expert testimony. What follows are three selected categories of forensic psychological evaluation that may be helpful to the practicing attorney.

Mental Status Examinations may be flexibly designed to answer questions pertaining to an individual’s behavior, emotional status or cognitive functioning (e.g. memory, attention deficit issue) or to address mitigating factors, probation or sentencing. These evaluations are particularly useful within criminal contexts and are frequently conducted with the goal of assisting the trier of fact to better understand psychological functioning in reference to legal charges. Examples would include arrest for DUI (addiction issues), sexual crimes (recidivism) and parental fitness psycho-diagnostic evaluations in child protection matters. However, mental status evaluations may also be used to address questions within civil settings such as the work-place (sexual harassment, cyber technology violations). Evaluations should be thorough and include observation, specific questioning, history-taking and psychological testing which may in-

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clude intellectual, ability and personality appraisals tailored to answer the referral questions.

Personal Injury Psychological Evaluations may be helpful to an attorney or legal team representing a plaintiff or a defendant following the claim of: a traumatic event e.g. assault, an incident such as a motor vehicle or boating accident resulting in a claim of mental or physical injury, medical care or surgery in which medical malpractice is alleged, to help determine if the claim is legitimate or is a result of malingering or deception, and to assess the extent of the damages, e.g. mental, medical, financial. Personal injury is an area of tort law involving a "private or civil wrong or injury other than a breach of contract, for which the court seeks to provide a remedy in the form of an action, usually monetary, for proven damages" (Black's Law Dictionary, 1979). A tort requires that the plaintiff's injury was proximately caused by the defendant which may involve negligence, malpractice or indifference (Kane & Dvoskin, 2011).

It is understood that certain diagnoses such as post-traumatic stress disorder (PTSD) may be over-reported. Specially designed psychological tests when combined with other measures and a dose of clinical acumen can be used to help estimate the validity of such diagnoses or the extent to which symptoms may be exaggerated due to external incentives. Psychological claims can be more difficult to prove than physical injuries and are more susceptible to feigning or malingering, thus the need for a skilled mental health evaluator to assist in providing an objective evaluation that would be difficult for the "treating psychologist" and should rather be conducted by a professional who has no allegiance to the client and can produce a more impartial final product, although as Kane and Dvoskin (2011) note, absolute objectivity is impossible to achieve as every expert brings their own personal biases to each case. However, foren-

sically trained psychologists tend to be more aware of potential sources of bias and acknowledge and control for that as much as possible.

It is well established that a period of prolonged and stressful litigation can trigger additional problems including financial hardship, marital stress, employment difficulties and the various sequelae frequently accompanying these circumstances such as anger, exacerbation of health problems (e.g. chronic pain, depression), and sometimes secondary gain. All of these factors can be evaluated and communicated through professionally designed psycho-diagnostic evaluations. Expert witness testimony may be helpful in court following the submission of an evaluation to further explain the sometimes-complicated information included in the evaluation and to answer questions pertaining to decisions that will need to be made about the case under consideration.

Fitness for Duty and Employment Setting Psychological Evaluations can be used in a number of ways including determination of a candidate's "goodness of fit" for a work position or to examine an employee's readiness to return to work following a period of time away from their job due to such circumstances as illness, addiction or conflict at the worksite (e.g. bullying). Legal matters such as employee complaints alleging harassment, discrimination, violation of Family and Medical Leave Act (FMLA), retaliation or wrongful termination are problems which can impact quality of life and emotional functioning and can be assessed as part of a broader mental status examination. Mental health factors such as chemical dependency (e.g. alcohol and recreational drug abuse, prescription drug abuse), dangerousness to self and others in the workplace, intellectual or memory capacity changes subsequent to illness or injury, attention deficit issues and anger management difficulties are some of the concerns that employers

may encounter with their employees that they will need to have objectively evaluated. A well-designed psychological evaluation to address the issues at hand can be extremely valuable in assisting the employment attorney's approach to working with individual clients, health systems or the corporate world.

Conclusion:

This article was written with the goal of informing practicing attorneys about how the legal system can utilize the skills of psychologists beyond simple referrals for treatment of psychological disorders. Selected specialty areas included personal injury and employment law. Due to the uniqueness of the scientist-practitioner training received and expertise in such techniques as psychological testing, clinical interviewing and report-writing, psychologists are highly qualified to assess human behavior and the factors relevant to it such as motivation, intelligence and personality. Forensically-trained psychologists can make a significant contribution by assisting the court system through a better understanding of psychological and cognitive factors of relevance to criminal and civil legal proceedings.

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