



**Identifying, Avoiding, and Addressing Ethical Misconduct in
Neuropsychological Medicolegal Practice**

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Abstract

Medicolegal practice involving evaluation of impairment and disability in compensation situations is rife with potential for ethical misconduct. The present paper reviews ethical issues involved in the evaluation of impairment and disability in compensation situations. It focuses primarily on ethical standards and practice in the United States. The ability to identify areas of particular risk is the first step in avoiding ethical misconduct. For competent professionals, the loss of objectivity is the primary risk factor for unethical behavior. In addition, lack of familiarity with relevant recent legal cases (such as Daubert), new neuropsychological methods and procedures, and changes in the relevant ethics codes may increase the risk of unethical behavior. In order to promote high levels of competent and ethical medicolegal practice, the legal system should continue advances to establish contingencies that reinforce objective examinations and testimony. When ethical misconduct is observed in one's colleagues, appropriate steps should be taken to protect both the consumers of our services and the public's perception of the profession. Ongoing education on the application of ethical principles to medicolegal practice can facilitate ethical professional behavior.

Keywords: Ethics; Unethical; Neuropsychological Assessment; Medicolegal; Compensation; Misconduct

INTRODUCTION

Forensic arenas bring together professionals from numerous disciplines with a range of training and experiences to evaluate examinees representing all walks of life and diagnostic conditions. Traditionally, most professionals have been called into forensic proceedings as an incidental and, sometimes, undesirable consequence of routine clinical treatment (Shuman & Greenberg, 1998). However, the combination of declining clinical service reimbursement and large financial suits with much higher forensic reimbursement rates has been associated with a proliferation of practitioners choosing forensic specialization (e.g., Sweet, Moberg, & Suchy, 2000).

During the last decade, neuropsychology has emerged as one of the fastest growing scientific and

applied specialties within psychology. Clinical neuropsychology is uniquely positioned to integrate and apply recent developments in the clinical neurosciences with behavioral and medical knowledge. This understanding of brain behavior relationships has been highly valued in the legal field. Hence, neuropsychologists are playing an increasingly important role in the courts as expert witnesses in the area of brain-behavior relationships, especially for forensic cases involving personal injury, worker's compensation and disability determination, and determination of competence to work, handle finances, or fulfill other important life functions.

The potential reasons for ethical misconduct in forensic settings are as diverse as the professionals

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and examinees involved. While some ethical issues are apparent and misconduct is volitional, some of the ethical misconduct in forensic settings may not be intentional. Rather, unfamiliarity with ethical and legal guidelines and the recommendations offered in professional literature can leave professionals vulnerable to the potentially discrepant ethical pulls and expectancies of legal and neuropsychological practice. Identifying and mitigating ethical conflicts that arise in forensic practice often presents a formidable challenge for even skilled, experienced, and well-intentioned neuropsychologists (Martelli, Zasler & Johnson-Greene, 2001).

The role of the neuropsychologist in forensic arenas may vary from treating doctor/fact witness to expert witness to trial consultant (Blau, 1984, 1992; Guilmette & Hagan, 1997; McSweeney, 1997). Each of these roles involves a unique set of potential ethical challenges. In some situations, the boundaries between these roles may become blurred, creating additional ethical challenges (Greenberg & Shulman, 1997; Greenberg & Gould, 2001). In addition, many legal experts disagree about the definitions and applicability of terms such as "treating doctor", "fact witness", and "expert witness". Due to the lack of uniformity in the use and acceptance of these terms, neuropsychologists in forensic practice may benefit from clarifying the specific role that is being requested, rather than simply relying on the assumed meaning of a potentially ambiguous term.

As there exist many potential situations for ethical misconduct, so too may ethical challenges be resolved in a variety of ways. Laws, institutional regulations, general biomedical ethics, and specific ethics codes exist to guide the examiner in the identification and resolution of ethical conflicts. In addition, experienced and ethically knowledgeable colleagues tend to be a valuable resource. However, many practitioners receive little education or training in identifying and managing ethical challenges in forensic contexts. Moreover, although there are increasing efforts by professional organizations to formulate ethical guidelines for forensic activities, most of these are relatively recent, some are still being refined, and guidelines do not always lend themselves to the more complex situations.

This article focuses on the role of the neuropsychologist as an independent examiner and expert testifying witness for forensic cases involving personal injury, worker's compensation and disability determination, and determination of

competence to work, manage finances, or fulfill other important life functions. It identifies the most prevalent and challenging ethical dilemmas focusing on practice in the United States. The differences between clinical and forensic practices are examined for relevant aspects of the medicolegal examination. Professional guidelines and ethical responsibilities of forensic experts who conduct medicolegal evaluations are explicated, with emphasis on the role of the expert testifying witness in facilitating objective evaluations that assist the court in its decision making process. Finally, recommendations are offered toward the goal of promoting ethical practice in this challenging professional arena.

ETHICAL CONCERNS OF PSYCHOLOGISTS AND NEUROPSYCHOLOGISTS

In 1992, the results of a survey of the membership of the American Psychological Association (APA) regarding ethical concerns in clinical psychology were published (Pope & Vetter, 1992). Critical incidents were separated into 23 categories of reported incidents of ethical dilemmas. Issues involving forensic psychology ranked fifth and consisted of concerns about the presentation of false testimony, the attorney's role in eliciting desirable (possibly false) testimony, the rendering of conclusions that are not grounded in objective data or scientific principles, and the potential for harm that could result from reporting accurate data. More specific to neuropsychology, a survey of the membership of the National Academy of Neuropsychology (NAN) revealed that the majority of the respondents were concerned about examiner competence (64%), inappropriate use of tests (61%), and conflict between the law and ethics (55%) (Brittain, Francis, & Barth, 1995). Notably, 50% indicated that the APA Ethics Code (American Psychological Association, 1992) insufficiently addresses ethical problems commonly faced in neuropsychology, and 57% conveyed dissatisfaction with the ability of ethics committees to enforce the Ethics Code. Some state and professional ethics committees (e.g., the APA Division of Neuropsychology Ethics Committee) do not adjudicate cases at all, choosing rather to offer advice to professionals seeking guidance on difficult ethical issues and providing advocacy to APA on behalf of the members of their organization.

The ethical issues identified as concerns to the broader memberships of APA and NAN are certainly of primary concern to professionals practicing in forensic arenas, as well as to those

serving on panels that establish policy involving training and certification of professional competency. It is unfortunate that many, if not most, professionals working in such contexts would acknowledge having insufficient education and training in ethics specific to forensic practice.

THE ADVERSARIAL ENVIRONMENT

The application of medical and psychological ethics within the legal arena is challenging and often problematic. Adversarial client advocacy tends to be more common than objective education of the trier of fact. The adversarial environment contrasts considerably with the patient advocacy model (advocating for the clinical services and other compensatory changes that patients need) embedded in the education and training of most healthcare professionals. Further, forensic expectations and preferences for "black and white" statements and conceptualizations and unqualified opinions frequently clash with the more frequent multiple influence biopsychosocial conceptualizations characteristic in the psychological sciences. Thus, for many examiners, the transition from the classroom or clinic to the courtroom involves a substantial paradigm shift and a corresponding struggle with the ethical, moral, and legal issues involved. The most logical approach to protecting the ethical behavior of the examiner, while still availing the court of one's expertise, may be an appreciation of and sensitivity to the disparities between conflicting interests and ethics.

APPLYING GENERAL MEDICAL ETHICS IN FORENSIC ARENAS

A primary ethical principle that guides clinicians in their work with patients is respect for others. Based on this fundamental respect for people, four core bioethical principles have been described: autonomy, non-maleficence, beneficence, and justice (Beauchamp & Childress, 1994). Autonomy refers to self-determination; that is, the ability to make healthcare-related decisions independently. Non-maleficence is closely related to the Hippocratic Oath that physicians have pledged to uphold and that psychologists have endorsed during licensing procedures: doing no harm. The concept of beneficence goes a step further in requiring that there is a promotion of that which is good for the patient. Clinicians who advocate for the best interests of their patients are being beneficent. In healthcare, the concept of justice typically concerns the equitable distribution of the burdens and

benefits of care (Hansen, Guenther, Kerkhoff, & Liss, 2000).

In forensic settings, the fundamental principle of respecting others must be upheld. Treating examinees with courtesy, dignity and fairness, and spending adequate time with them, will convey respect. The concept of autonomy is also applicable. Examinees present for independent medical or psychological examinations more or less of their own volition. They maintain the option of not participating, or discontinuing the examination at any time, albeit with possible negative consequences.

In forensic contexts, the concepts of non-maleficence and justice are closely tied. While the examiner has the responsibility to bring no direct harm to the examinee during the examination, neuropsychological examinations may result in temporary frustration caused by being faced with challenging cognitive tasks, as well as changes in mood due to emotionally-sensitive query. However, the results of the examination also have the potential to significantly impact the examinee's future. The ability to continue receiving clinical services or to receive a financial award may hinge on the outcome of such an examination. It is the neuropsychologist's task to conduct the evaluation in a fair manner and to present the results objectively and dispassionately. The court or other party requesting the examination will then have the responsibility to see that the outcome is just. An examinee that is denied services or monies based in full or in part on the independent neuropsychological examination may believe that they were not treated justly and that the examination did indeed cause them harm. However, the examiner that has treated that individual respectfully and with dignity and has facilitated meaningful interview, listened to the examinee's concerns and spent sufficient time throughout the examination will be less likely to be perceived as unfair or acting with maleficence.

With independent examinations, the principle of beneficence does not apply directly to the examinee. Helping the examinee is not the primary goal of the forensic examiner. Promotion of the person's well-being is not primary, as it is in clinical situations. Instead, the examiner's evaluation is conducted for the benefit of the trier of fact or other decision-making body. The examinee may or may not benefit from the results of the evaluation and the decisions based on the results, and the examiner's responsibility is to remain objective.

PSYCHOLOGICAL ETHICS RELEVANT TO FORENSIC ARENAS

The Ethical principles of psychologists and code of conduct of the American Psychological Association (APA, 1992; APA, 2002) consists of an Introduction, Preamble, General Principles, and Ethical Standards. The Preamble and General Principles reflect aspirational goals and guides toward the highest ideals of psychology. The

Principles should be considered in arriving at ethical courses of action and in interpreting the Ethical Standards. The Ethical Standards set forth enforceable rules of conduct. They are written broadly to apply to psychologists in varied roles and are not exhaustive. A summary of the newly released ethical principles and standards that are most relevant to forensic practice is included in Table 1.

Table 1
A.P.A. Ethical Principles and Standards with Specific Medicolegal Relevance (APA, 2002).

| Pinciple | Title |
|--|---|
| A | Beneficence & Non-maleficence |
| B | Fidelity & Responsibility |
| C | Integrity |
| D | Justice |
| E | Respect for People's Rights & Dignity |
| Standard | Title |
| 1.01 Resolving Ethical Issues) | Misuse of Psychologist's Work |
| 1.02 | Conflict Between Ethics & Law |
| 1.03 | Conflict Between Ethics & Organizational Demands |
| 1.04 | Informal Resolution of Ethical Violations |
| 1.05 | Reporting Ethical Violations |
| 1.07 | Improper Complaints |
| 2.01 (Competence) | Boundaries of Competence |
| 2.03 | Maintaining Competence |
| 2.04 | Bases for Scientific & Professional Judgements |
| 3.04 (Human Relations) | Avoiding Harm |
| 3.05 | Multiple Relationships |
| 3.06 | Conflict of Interest |
| 3.07 | Third-party Requests for Service |
| 3.10 | Informed Consent |
| 4.02 (Privacy & Confidentiality) | Discussing Limits of Confidentiality |
| 5.01 (Advertising, Public Statements) | Avoidance of False or Deceptive Statements |
| 6.01 (Record Keeping & Fees) | Documentation of Professional & Scientific Work |
| 6.06 | Accuracy in Reports to Payors and Funding Sources |
| 9.02 (Assessment) | Use of Assessments |
| 9.03 | Informed Consent in Assessments |
| 9.04 | Release of Test Data |
| 9.06 | Interpreting Assessment Results |
| 9.11 | Maintaining Test Security |
| APA Ethical Principles of Psychologists and Code of Conduct, 2002. | |

In an effort to provide more specific guidance to psychologists regularly engaged in professional activities in the judicial system, a joint statement regarding specialty guidelines was issued by the American Psychology-Law Society and Division 41 of the American Psychological Association, with endorsement by the American Academy of

Forensic Psychology (1991). These specialty guidelines, although not endorsed by the APA, are intended to be consistent with APA ethics and to amplify current aspirations of desirable professional conduct for psychologists conducting forensic work. A summary of content of the specialty guidelines is included in Table 2.

Table 2
Specialty Guidelines for Forensic Psychologists: Summary of Content

| |
|---|
| <p>I. PURPOSE AND SCOPE Amplifies current aspirations of desirable professional conduct for psychologists conducting forensic work</p> |
| <p>II. RESPONSIBILITY Provide services consistent with the highest professional standards and ensuring reasonable effort that services are used forthrightly and responsibly.</p> |
| <p>III. COMPETENCE Recognize and accurately inform re: competence and limitations; Maintain competence; Maintain knowledge and understanding of relevant legal and professional standards, civil rights of litigating parties; Consider personal values, beliefs, and relationships re: litigating parties.</p> |
| <p>IV. RELATIONSHIPS Inform re: fee structures, potential conflict of interests, competence and limits, known scientific bases and methodology limitations, qualifications; Decline contingency fee arrangements; Offer some pro bono or reduced fees in the public interest; Avoid dual relationships; Obtain informed consent with exceptions, disclose role for examinations and research / scholarly products; Appraise and attempt to resolve ethics and law conflicts.</p> |
| <p>V. CONFIDENTIALITY AND PRIVILEGE Be aware of / respect legal standards affecting confidentiality or privilege, inform regarding; Maintain active control in record keeping and communication; Provide access to records and meaningful explanations, consistent with relevant laws, organizational rules and ethical principles / standards of psychologists.</p> |
| <p>VI. METHODS AND PROCEDURES Maintain and integrate current knowledge of scientific, professional and legal developments; Document, anticipate, make data available per relevant legal rules; Protect against undue influences from financial or other gains and actively examine rival hypotheses; Ensure legal representation before provision of services; Inform re: emergent services provided, avoid further forensic services; Seek data from other sources only with prior approval or as a consequence of court ordered examination; Minimize reliance upon hearsay, inform, seek corroborative data; Clarify origins of data; Ensure conformance to Federal Rules; Exercise prescribed cautions in preparing reports or offering testimony re: mental state claims; Avoid report or oral evidence about the individuals not directly examined.</p> |
| <p>VII. PUBLIC AND PROFESSIONAL COMMUNICATIONS Ensure services, public statements, testimony promote understanding and avoid deception; Correct misuse or misrepresentations; Inform about services consistent with professional and legal standards for disclosure, data interpretation, and factual bases for conclusions.; Comply with Principle 16 of the Standards for Educational and Psychological Testing re: disclosing results to a non-psychologist (i.e., test security; restricted access; inform re: qualified interpretation or scores); Ensure fairness and accuracy in presenting findings, conclusions, factual bases, etc., in professional and public statements; Preclude partisan representations; Actively disclose sources of information; Distinguish professional observations, inferences and conclusions from legal facts; Be prepared to explain relationship between expert testimony and legal issues and facts of a case.</p> |

In order to more specifically address neuropsychological practice, Binder & Thompson (1995) interpreted the 1992 APA ethics code in relation to neuropsychological assessment practices. More recently, in a new work, Bush & Drexler (2002) comprehensively address ethical issues in clinical neuropsychology. A chapter

particularly relevant to the medicolegal compensation focus of the current paper is presented by Sweet, Grote and van Gorp (2002).

In addition to general medical ethics, specific psychological ethics, and emerging works on applying ethical principles and standards to forensic

psychology and neuropsychology, much additional work is available from individual authors and organizations. Although some ethical situations are relatively discrete, clear cut, and adequately addressed by existing ethical guidelines, many are complex and not directly or completely addressed by existing codes and guidelines. Further, it is not uncommon for several ethical principles or standards to be relevant to a single situation. Responding in an ethically informed manner in forensic arenas will frequently require review of the many additional writings on relevant topics that supplement formal ethics codes. Examples of such writings include position papers by the National Academy of Neuropsychology (2000a, 2000b, 2000c) on the presence of third party observers during neuropsychological testing, the use of technicians in neuropsychological practice, and issues involving test security.

AVOIDING ETHICAL MISCONDUCT

Psychologists and neuropsychologists engaging in forensic practice must rely on awareness of the many potential ethical pitfalls in order to take steps to avoid them. Passive reliance on the belief that one is “ethical” and doing quality work is not sufficient to avoid ethical misconduct. Professionals must be assertive in seeking out knowledge, skills, and feedback related to ethical forensic practice (van Gorp & McMullen, 1997; Pope & Vasquez, 1998).

Qualifications and Expertise in Psychology and Neuropsychology

The new version of the APA Ethics Code has just undergone final revisions and has been published in the American Psychologist (APA, 2002). Although changes in the format and content of the ethics code were refined, proposed guidelines regarding qualifications and expertise appear to be consistent with previous guidelines (American Psychological Association, 1992). That is, psychologists should make reasonable efforts to maintain high standards of competence in their work, recognize the boundaries of their competencies and the limitations of their expertise, and provide only those services and use only those techniques for which they are qualified by education, training, or experience (Ethical Standard 2).

Clinical neuropsychology has made progress in recent years toward defining expertise and establishing standardization of training. While variability in education, training, and experience remain, eligibility for board certification (diplomate

status) is an accepted standard of clinical expertise. Such board certification is conferred following a rigorous peer-reviewed application and examination process. The American Board of Professional Psychology (ABPP) offers specialty board certification in Clinical Neuropsychology (ABCN), Forensic Psychology (ABFP), and others. In addition, the American Board of Professional Neuropsychology (ABPN) offers board certification for qualified neuropsychologists. Despite noteworthy limitations (e.g., Lees-Haley & Fox, 2001), the attainment of one of these board certifications probably provides the clearest evidence of competence in the relevant area of specialty.

Many other board certifications are available from organizations other than ABPP or ABPN. However, the criteria for attainment of these other “board certifications” varies from just a fee to varying levels of examination and documentation. The inclusionary criteria, the thoroughness of the process, and the stringency of the eligibility requirements should be carefully scrutinized in light of a proliferation of “vanity boards” (e.g., Golding, 1999; Dubrow-Eichel, 2002).

Binder and Thompson (1995) recommended that neuropsychologists: (a) seek rigorous peer review to ensure competence in the area of neuropsychological assessment, and obtain supervision until any identified deficiencies are remediated, (b) obtain board certification as the most rigorous mechanism for peer review, and (c) be careful to practice only within the boundaries of neuropsychological competence, and seek consultation when appropriate. Continuing education is clearly critical for maintaining expertise. The APA Ethics Code mandates that “Psychologists undertake ongoing efforts to develop and maintain competence” (Ethical Standard 2.03; APA, 2002).

Notably, in the Martelli et al (1999b) paper, a preliminary expert witness competence checklist for neuropsychology and brain injury specialties was devised and this checklist is available online at: <http://villamartelli.com/ExpertCL.pdf>.

Qualifications and Expertise in Medicine as Relevant to Psychology

The American Medical Association’s (AMA) Council on Ethical and Judicial Affairs published its most recent Code of Medical Ethics in 1996. The AMA Ethics Code (American Medical Association, 1996) is fairly general; however, it

does state that medical experts should “have recent and substantive experience in the area in which they testify and should limit testimony to their sphere of medical expertise.” The code further stipulates that the “medical witness must not become an advocate or partisan in the legal proceeding.” It further suggests that witnesses inform attorneys of “all favorable and unfavorable information developed by the physician’s evaluation of the case.”

The American Academy of Physical Medicine and Rehabilitation (1992) also published a document with recommendations for expert witness testimony. This “white paper” indicates that the expert witness should serve to educate the court as a whole, rather than representing one side or the other, even when the expert has been retained by one party. The document suggests that the ultimate test for accuracy and impartiality is a willingness to prepare testimony that could be presented unchanged for use by either the plaintiff or the defendant. Three additional recommendations are emphasized: (a) the physician should identify opinions which are personal and not necessarily held by other physicians, (b) a distinction should be made between medical malpractice and medical maloccurrence when analyzing any case, and (c) there should be a willingness to submit transcripts of depositions and/or courtroom testimony for peer review.

The American Academy of Neurology and the American Board of Medical Specialties have presented the following guidelines for the physician expert witness: (a) the physician expert witness should be fully trained in a specialty or a diplomate of a specialty board recognized by the American Board of Medical Specialties, and qualified by experience or demonstrated competence in the subject of the case. The specialty of the physician should be appropriate to the subject matter in the case, and (b) the physician expert witness should be familiar with the clinical practice of the specialty or the subject matter of the case at the time of the occurrence, and should be actively involved in the clinical practice of the specialty or the subject matter of the case for three of the previous five years at the time of the testimony (American Medical Association, 1993). These guidelines provide a useful model for neuropsychologists as well as neurologists. Similar guidelines have also been published by the American Academy of Psychiatry and the Law (1989) and American Psychology-Law Society and Division 41 of the APA (1991), among others.

Dual/Multiple Relationship Issues

In clinical practice, the possibility exists that relationships with patients outside of the therapeutic context will cause harm to the patient. Given the perceived power differential between doctor and patient, being involved in personal, scientific, financial, or other relationships with the doctor may be exploitative to the patient. Psychology training proscribes both the development of such relationships with current or former patients and the provision of therapeutic services to those with whom a prior relationship existed.

In forensic practice, dual relationships have the potential to affect the objectivity of the examiner. A pre-existing relationship that is more than a formal acquaintanceship represents the potential for a conflict of interest (Greenberg & Shulman, 1997). Any relationship that may be seen by others, as well as the parties involved, as having the potential to bias the opinion of the examiner should be avoided and should eliminate that professional from consideration as an examiner (American Psychology-Law Society and Division 41 of the APA, 1991; Shulman, Greenberg, Heilbrun, & Foote, 1998; Iverson, 2000). However, exceptions may be made when no other expert is available or in situations in which failing to provide professional consultation may increase the potential for harm to the examinee. Provision of a needed service outweighs many potential threats to objectivity. When such an exception is the optimal course of action, the nature of the pre-existing relationships and its potential ramifications on the results of the examination should be conveyed to all parties prior to conducting the examination and should be clearly documented in the written report. In addition, any safeguards employed to promote objectivity should be discussed.

Dual professional relationships in forensic practice may also serve to undermine the professional’s objectivity, credibility, and negatively affect the parties served. Although ethics codes tend to emphasize proscription of dual relationships between professional and nonprofessional roles, avoiding conflicts between differing professional roles is also of considerable importance.

Blau (1984, 1992) described the three different professional roles for psychologists working in forensic settings: Treating Doctor, Expert Witness, and Trial Consultant. The Treating Doctor tends to have an empathic bond with the patient and advocate for the patient in ways intended to

improve mental or physical health. When offering testimony, the role of the Treating Doctor becomes that of a fact witness; that is, to describe the usual treatments that have been provided and the procedures employed. The Treating Doctor does not have the role of offering opinions beyond those contained in their reports, nor should he or she perform evaluations on the basis of anything other than medical necessity. The Expert Witness, without prior knowledge of the examinee, obtains special and exceptionally complete information in order to render an opinion. In order to facilitate objectivity, no emotional bond is established with the examinee. The Trial Consultant is retained to assist with the critical scrutiny and impeachment of the experts and the opinions on the opposing side of the adversarial process. The trial consultant does not testify and usually functions under the cloak of anonymity. These three roles are separate and distinct and represent differing interests and obligations. Failure to clarify the limits of one's role for both oneself and the other parties involved may lead to inappropriate mixing of roles, with a resultant loss of objectivity and professional accuracy.

In forensic practice, clinicians are frequently requested to serve as an expert witness. For the previously stated reasons, such practice is problematic, particularly if other professionals are available to perform the role of expert witness. Nevertheless, the blending of roles is often appealing to attorneys. Ease of involvement, savings in time and/or cost, and a tendency for increased patient empathy and advocacy are some of the reasons that using the treating clinician as the expert witness is advantageous to attorneys. These conflicting roles may be avoided by providing the patient's treatment record instead of testimony (Strasburger, Butheil, & Brodsky, 1997). Treating

clinicians should maintain firm role boundaries and provide testimony only as a fact witness. Any role conflicts that do arise should be acknowledged in testimony and in reports.

Professionals demonstrate non-maleficence and beneficence and promote justice in forensic practice by conducting unbiased examinations and testifying honestly. Sweet and Moulthrop (1998) offered relevant and pointed self-examination questions that should be utilized when conducting assessments in adversarial contexts. These contain questions for procedural conduct, including, for example, favorability of findings to referral source, comparison of current findings with base rates and presence of emotions and actions suggesting advocacy. They also contain questions for written reports which range from whether a panel of peers / experts would agree with findings and whether contradictory facts and evidence was included or excluded, to whether exaggerated or dramatic descriptors were employed.

Lees-Haley (1999) has further suggested that, in addition to self-examination, examiners should develop and employ externally validated safeguards to increase the probability of objectivity. Until such safeguards are developed, guidelines such as those proposed by Brodsky (1991), Blau (1984; 1992), Sweet and Moulthrop (1998) and Martelli and colleagues (Martelli, Zasler, & Johnson-Green, 2001; Martell, Zasler & Grayson, 1999a; 1999b) offer good starting points for attempting to maintain examiner objectivity. Table 3 is adapted primarily from these sources and presents a list of recommendations for promoting objectivity and ethical conduct for expert witnesses.

Table 3
Recommendations for Promoting Objectivity and Ethical Conduct in Medicolegal Contexts: Guidelines for Testifying Expert Witnesses

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1. Avoid or resist attorney efforts at enticement into joining the partisan attorney-client team.
 2. Respect role boundaries and do not mix the conflicting roles of treating doctor, expert, and trial consultant.
 3. Spend sufficient time directly evaluating and treating the examinee population for whom expert testimony is given.
 4. Insist on adequate time for record review, evaluation and report generation.
 5. Avoid cutting of corners, be thorough, and rely on standardized, validated, well normed and well-accepted procedures and tests. Only use specific, appropriate norms, take into account symptom base rates and consider all competing explanatory factors for symptoms.
 6. Review all available information before arriving at opinions, always include and consider contradictory facts and evidence and never arrive at opinions which are inconsistent with the plaintiff's records, test data, and behavioral presentation.
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7. Balance cases from plaintiff and defense attorneys and resist specialization in an adversarial legal system.
8. Ensure against excessively favoring the side of the retaining party.
9. Ensure against excessive black and white findings. Recognize the limitations of scientific, medical and neuropsychological opinion, fewer findings are black or white or attributable to a single event (e.g., Ockam's Razor).
10. Make efforts to both guard against motivational threats to assessment validity. Always attempt to facilitate response validity and and always assess response bias.
11. Perform critical self examination (e.g., Sweet and Moulthrop's (1999) questions) in every medicolegal case. Keep running statistics and strive for balance in ratios relating to favorability of findings to retaining party, defense vs. plaintiff referrals and black-white vs. mixed findings. Strive for objectivity and a reputation for such.
12. Dispute the opinion of other experts only in pursuit of objectivity and in the context of a complete and accurate representation of the other expert's findings, inferential reasoning and conclusions.
13. Attempt to develop and employ formal mechanisms for monitoring objectivity, the validity of diagnostic and prognostic statements against external criteria, and receipt of objective feedback from peers.
14. Consider promoting increased awareness within the forensic professions of relevant issues relating to ethics and scientific objectivity (e.g., promoting use of professional ethical standards by courts in assessing admissibility of evidence (Shuman & Greenberg, 1998)).

Adapted from Martelli, Zasler, and Grayson (1999a) and Blau (1992)

How an expert assists the retaining party in the forensic aspects of the case may also represent ethically questionable behavior. Examiners may go beyond providing their own "independent" and objective opinion about the examinee. Specifically, many experts move beyond objective opinions and education about their own procedures and findings with an examinee in contrast to those of others, to getting involved in assisting with "trial preparation" and assisting with efforts to impeach the procedures of examiner's who reach different conclusions. Partisan criticism against experts and advocating for the adversarial attorney team in its battle to "win" through impeachment (e.g., by preparing deposition or trial questions or strategy or discussing stylistics or cases beyond the current one) is problematic. Ethically, this breaches role boundaries to the extent it moves the examiner out of the role of simply an advocate for the truth and more into a position of advocate for the retaining party.

CONDUCTING THE MEDICOLEGAL EXAMINATION

Referral Sources

In forensic practice, referrals usually come from attorneys, insurance companies, other third party payors, and physicians. While referrals from attorneys and insurance companies are clearly forensic and intended for use in litigation, clinical referrals from physicians or other referral sources

may also become part of subsequent litigation. APA Ethical Standard 1.21 mandates that "When a psychologist agrees to provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party." With regard to forensic psychological and neuropsychological practice specifically, the American Psychology-Law Society and Division 41 of the APA (1991) and Binder and Thompson (1995) further emphasize APA's position.

Communicating with the Examinee

Examinees often present for independent examinations with ambivalence, anxiety, and distrust regarding the examination (Brodsky, 1991; Martelli, Zasler & Grayson, 1999b; Martelli & Zasler, 2001), in addition to the specific cognitive, emotional, behavioral, physical, and/or interpersonal difficulties that are the reasons for the examination. The potential ambivalence, anxiety, and distrust may be due in part to inaccurate or incomplete information provided to them by their attorney, family members, treating health professionals, or others regarding the purpose and nature of the independent examination.

These can clearly amplify anxieties related to examinations generally, and ones generated through adversarial litigation more particularly. Therefore, the examiner who provides accurate information

about the purpose of the examination and the procedures to be employed and the referral source at the outset of the examination may help reduce confusion and examinee anxiety and distrust and increase cooperation. Clearly, as the American Psychology-Law Society and Division 41 of the APA (1991) and Binder and Thompson (1995) have noted, psychologists and neuropsychologists should attempt to minimize any potential discomfort associated with the examination.

As a component of the description of the examination process, the examiner should emphasize the importance of putting forth one's best effort throughout the examination. It should also be explained that the examinee's effort and forthrightness will be assessed in a manner that does not disclose the general or specific procedures. In addition, the examinee should be informed of the potential consequences of prematurely discontinuing the examination, including possible adverse impact on their medical treatment, benefits or litigation.

Limits to confidentiality must also be presented, including mandated reporting of those who present a danger to themselves or others, and release of any information conveyed to all parties in the litigation process. Exceptions to confidentiality should also be explained even in the context of clinical examinations given any potential for future legal involvement. Immediate exceptions include release of records to payment and referral sources and future exceptions include release to parties involved in forensic proceedings or litigation.

The examinee should also be informed of the process for feedback about the results. With independent examinations, the examinee should be informed that no feedback will be provided by the examiner directly to the examinee, but that feedback may be available through the examinee's attorney or other sources.

Assessment Procedures

Forensic examinations represent situations in which the neuropsychologist's procedures may be closely scrutinized by the opposing counsel and the professionals retained by the opposing counsel. In such situations, the procedures that the examiner employs and the scoring and interpretation of neuropsychological test data will be critically examined. Due to differences of opinion within the discipline of neuropsychology regarding optimal methods of investigation, no set of procedures is beyond reproach. However, tests and assessment

procedures that have a strong research base, are well accepted within the profession for the purpose for which they were used, and have a history of acceptance in the courts tend to be most easily defended. Binder and Thompson (1995) recommend using up-to-date neuropsychological tests and norms and relying on current knowledge, including information on relevant demographic characteristics. Furthermore, the examiner should acknowledge limitations in current knowledge. If, under special circumstances, experimental procedures or normative data not representative of the examinee are used, test results must be interpreted cautiously, and clear documentation of these procedures and the rationale for their use should be provided.

Although the 1992 APA Ethical Standard 2.07 states that "psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose," that does not necessarily mean that the most recently released test represents the best option for a particular neuropsychological examination. In fact, procedures for estimating premorbid intellectual functioning, determining the presence or degree of brain injury, and/or developing treatment programs may need to be based on an earlier version of a test until appropriate research has been conducted with the new procedure or measure. Thus, a test may not become "outdated" or "obsolete" until an equivalent body of research-based knowledge is available for the new version of the test. The examiner has the responsibility of weighing the advantages and disadvantages of using one test, one version of a test, or one normative database instead of another. In such situations there is usually no one right or wrong position, as long as the position chosen can be explained adequately and is consistent with the goals of the examination.

Third Party Observers

The issue of allowing a person other than the examiner and examinee into the examination session is complicated. Persuasive arguments are offered both for (e.g., safeguard objectivity and test administration accuracy, reduce suspiciousness and anxiety) and against (e.g., intrusive effects, test security, test performance alteration) the presence of third party observers. In fact, the issue is not so much whether, but who should be able to observe and in which settings. Many jurisdictions have declared that an outside observer is permissible as part of the discovery process in litigation. Some courts have ruled that attorneys may be present

during the evaluation of their client, whereas other courts have advised that examinees have the right to have a doctor of their choice present during independent examinations. Perhaps the only consensus among neuropsychologists is that an attorney should not observe. Several authors have presented reasons why the presence any third party is not indicated. These include (a) compromise of test security and subsequent misuse of tests, (b) invalidation of results due to tests not having been standardized with third parties present, and (c) invalidation of results due to social facilitation (Binder & Johnson-Greene, 1995; McCaffrey, Fisher, Gold, & Lynch, 1996; National Academy of Neuropsychology, 2000a, 2000c; Kehrer, Sanchez, Habif, Rosenbaum & Townes, 2000).

A policy statement from the American Academy of Clinical Neuropsychology distinguished between involved and interested observers, and uninvolved observers with no stake in the outcome (Hamsher, Baron, & Lee, 1999). A NAN policy statement distinguishes between settings, with third party observers being acceptable in clinical settings for training purposes but unacceptable in forensic settings (National Academy of Neuropsychology, 2000a). Thus, issues of observer training, observer involvement, and examination context have all been considered relevant in the debate on appropriateness of third person observers during examinations. Videotaping and audio taping have also been discussed as less intrusive means of monitoring the examination process. These methods of observation may also introduce a factor of unknown significance into the examination process, although presumably less so for audio taping.

Importantly, observations are being increasingly ordered by the courts. Further, related arguments have been made that restrictions placed on disclosure of raw test data are harming the profession (Barth, 2000; Lees-Haley & Courtney, 2000; Shapiro, 2000; Tranel, 2000). Consensual recommendation was made for a multidisciplinary panel. Finally, the adversarial setting and process itself violates standardization conditions and introduces an unknown factor that may overwhelm any effects from observers. Therefore, continued discussion of this matter seems indicated. It may be incumbent that neuropsychologists develop ethical rules and methods to manage this situation (Russell & Russell, 2003).

Documentation

APA Ethical Standard 1.23 (b) (APA, 1992) states that when there is likelihood that records of professional services will be used in legal proceedings, psychologists have a responsibility to create and maintain documentation in detail and quality consistent with scrutiny in an "adjudicative forum." Some examiners choose to acknowledge materials or other sources of information that may have been relevant to the evaluation but which were not available to the examiner for review.

Ethical practice requires that examination findings be presented accurately. Any released report should be considered final for its purpose. When factual errors in dates or places or other information occur in reports, the examiner may choose to attach an amended page to the report or produce a corrected version of the report and document the rationale for which it was produced. A threat to ethical practice arises whenever the examiner considers making changes to a report to satisfy the referring party.

All opinions are provided with medical or neuropsychological "probability", unless otherwise indicated. Some examiners include a statement noting that their conclusions are based, in part, on the assumption that the materials provided for review are complete and correct and that if any additional information becomes available at a later date, opinions may be subject to change. Records should be retained per applicable statutes, with consideration of relevant APA guidelines (e.g., Ethical Standards 5.04, 5.09, and 5.10).

Release of Raw Data

In forensic practice, it is common to receive requests for all records, including reports, progress notes, and copies of the raw data upon which the examiner's conclusions have been based. With appropriate signed releases from the examinee, copies of reports and progress notes can be freely provided to others. However, neuropsychological test protocols can only be released to another professional who is qualified by training and experience to understand the material and appreciate the need to safeguard the material. The reasons for maintaining test security may not be fully understood by non-psychologists. Valid assessment of certain cognitive skills, such as memory and novel problem-solving, depends on the examinees' lack of familiarity with test items (National Academy of Neuropsychology, 2000c). The loss of the uniqueness of the instruments invalidates the results of the instrument for a given individual, and widespread availability of the

instrument to non-psychologists may invalidate the measure altogether. The 1992 and 2002 APA Ethics Code both require reasonable efforts to maintain the integrity and security of tests and assessment techniques, consistent with the law, contractual obligations, and the requirements of the Ethics Code. Copying test protocols, videotaping examinations, and audio taping examinations, without reasonable safeguards against release to non-psychologists, violates the APA Ethics Code by placing test materials in the public domain and by making tests available to those not qualified to use or interpret them (Standard 9.11, 9.02, 9.04, 9.06; APA, 2002).

The availability of test instructions and questions to those outside the field of psychology provides the opportunity for examinees to determine their responses prior to undergoing the examination. Experience has demonstrated that those who gain access to test materials can, and do, manipulate examination results or coach others to do so. In addition, familiarity increases likelihood of circumventing methods of response bias detection (Coleman, Rapport, Millis, Ricker, & Farchione, 1998; National Academy of Neuropsychology, 2000c; Wetter & Corrigan, 1995; Youngjohn, 1995; Youngjohn, Lees-Haley, & Binder, 1999).

In addition to the potential for public harm (e.g., genuinely impaired patients producing an inflated performance due to prior exposure to test items), invalidation of tests could result in requirement for replacement, which is a time-consuming and expensive process. Such factors could negatively impact test publishers, test development, and future scientific and clinical endeavors.

Binder and Thompson (1995) recommend that neuropsychologists attempt to avoid releasing raw data to non-psychologists. The National Academy of Neuropsychology (2000c) also "fully endorses the need to maintain test security, views the duty to do so as a basic professional and ethical obligation, strongly discourages the release of materials when requests do not contain appropriate safeguards, and, when indicated, urges the neuropsychologist to take appropriate and reasonable steps to arrange conditions for release that ensure adequate safeguards" (p. 6).

Binder and Thompson (1995) provide the following recommendations: Neuropsychological records should only be released with the consent of the patient or guardian, except under court order; document explanations when releasing test information does not appear to be in the patient's

best interest; and communicate about patients only that information that is germane to the purpose of the communication. More recently, the National Academy of Neuropsychology (2000c) has presented a step-by-step process for addressing requests to release test data. In general, when raw test data are requested by attorneys, clients, and others, the examiner should explain the ethical issues involved and offer to provide the materials, with consent, to a neuropsychologist of that person's choosing. A similar response is suggested for a subpoena for records. If efforts to negotiate a release to neuropsychologist or adequately training and experienced psychologist fail, then consideration must be given to both potential harm and protection of test materials in considering legal consultation and attempt to appeal and squash the subpoena. In the case of a court order, the neuropsychologist should continue to convey to the court the professional and ethical issues involved, including the need to safeguard test materials and protect the welfare of the subject. Negotiation of a court order is usually not possible, although an appeal may be. However, this usually only occurs in isolated cases (e.g., significant potential for harm of the subject). In addition to releasing the materials in a timely manner, a reasonable solution for safeguarding the materials and subject welfare should be recommended. Such solutions could include limiting the release of information to certain parties, having all parties enter into a written agreement that protects information and materials, and obtaining a protective order from the court. Importantly, laws vary by state and frequently differ from federal rules in the U.S and certainly outside of the U.S. Familiarity with these rules will assist in determining the final response to record requests, and legal consultation is indicated in cases of uncertainty.

Provision of Feedback

In independent examinations, the examiner does not convey the results to the examinee. The informed consent process performed prior to beginning the examination is intended to convey this fact to the examinee at the outset. When clinical neuropsychological examinations are performed in the context of a medicolegal case, the examinee is provided with feedback, including recommendations.

FORENSIC EXPERTS

The Professional Expert Witness

Experts who earn significant or primary percent of their income from forensic evaluations may be overly invested in the forensic community and at increased risk for compromised objectivity. In such situations, ample reinforcement, from subtle to overt, exists for maintaining a continuing referral pool and lucrative practice by adopting conceptualizations and opinions compatible with a high degree of favorable findings for the referral source. Even with concerted, successful efforts to remain objective, such investment in forensic examinations may give the appearance of bias. Having a well-rounded practice, both within and outside of forensic arenas, is a recommended safeguard against "creeping adversarialism" (Martelli, Zasler & Grayson, 1999b) and other forms of nonobjectivity. Notably, the American Psychology-Law Society and Division 41 of the APA (1991) prescribes conducting some portion of professional services on a pro bono or reduced fee basis in order to serve persons with insufficient resources, consistent with more general APA principles regarding provision of some noncompensated services (Principle B).

Expert Witness Fees

Examiners are typically paid at higher rates for forensic work than they are for clinical services outside of forensic arenas. There are several reasons why higher fees are assessed in forensic contexts, including: (a) requirements for a different, typically expanded, knowledge and skill base; (b) greater stressors and higher rigor of the standards associated with the litigation process; (c) the impact of such work on clinical responsibilities, including detraction from normal patient scheduling, need for arranging clinical coverage, etc. However, the introduction of discrepancies in fees raises several ethical considerations.

Differential fees introduce risk that financial incentive will exert at least subtle influence on the assessment process and opinions offered. Therefore, fees should not be contingent upon the outcome of the case, the referral source or the prospects of future referrals. Such factors introduce bias, and such behavior is clearly proscribed in both the general and specialty APA and AMA ethical guidelines (e.g., the American Psychology-Law Society and Division 41 of the APA, 1991). Charges should be based solely on fixed fees that remain constant across referral sources and situations and time expended, as agreed to in advance. Finally, to reduce potential for opportunism and promote ethical practice, fees should be assessed with both "reasonableness" and

"consistency" (Shiffman, 1997). "Reasonableness" refers to the degree of similarity of fees charged by other examiners or witnesses in or similar specialties and localities, and "consistency" refers to the degree of compatibility with other procedures of similar demand and time provided by the practitioner.

Particularly compromising practices involve discounting of fees based on an unfavorable resolution of a case and taking a lien against monies presumably collected in litigation. Both have great potential for compromising objectivity and ethical behavior and are almost universally proscribed in ethical codes in psychology and medicine generally and in specialty guidelines. Both situations invest the examiner in the outcome of the case and may predispose the examiner to make conclusions that support the interests of the referral source. Neuropsychologists should not engage in the potentially biasing practices of taking liens or discounting fees based on the outcome of litigation. Court-Selected Experts and Court-Hired Experts

Perhaps a more practical approach to ensuring examiner objectivity than using unpaid experts is to have the courts select and hire examiners. Recently, judges in Virginia have begun playing an increased role in the selection of experts for independent evaluations. Specifically, an increasingly common practice is for the presiding trier of fact to solicit a list or panel of experts from counsels, from which the judge, sometimes in collaboration with opposing counsels, selects the professional to perform an independent evaluation. Although initially observed in situations where opposing counsel protests or attempts to block utilization of a particular expert, this practice seems to be expanding to other contexts.

As observed to this point, judges and opposing counsels can air opinions and personal knowledge about the competence, objectivity and fairness of experts from the list. Decisions are then supervised, or made, by a trier of fact that attempts to ensure the selection of experts who, by consensus, will provide the court with the most objective information. In this way, experts are selected, and thus financially rewarded, on the basis of their consensually agreed upon objectivity and ethics, rather than on their willingness to engage in various degrees of "scientific perjury". Further use of this procedure is recommended.

With slight modification, this procedure could be expanded to include court-hired experts. By allotting a fixed amount of financial resources for

experts and independent evaluations provided by both sides in a case, the court, through either judicial selection following discussion, or by consensual decision-making, could choose and hire experts. This procedure would include safeguards against bias and unethical practice in at least two primary ways: (a) professionals with greater consensually agreed tendencies toward bias would likely be rejected versus reinforced for bias, and (b) financial incentives would not favor the plaintiff or the defense due to hiring by the court, and more impartial information delivery could be expected. For these reasons, the use of court-appointed and court-hired experts offers promise for promoting ethical forensic practice.

Monitoring Bias

In the context of personal injury examinations, attribution bias refers to the tendency to incorrectly attribute current symptoms to an injury or to the event in question (Deidan & Bush, 2002). It typically results in a confounding of accurate diagnosis and appropriate treatment. Examinees can demonstrate attribution bias when they mistake common cognitive symptoms or inefficiencies as direct sequelae of a mild traumatic brain injury when they are instead due to the emotional sequelae of an accident or stress. Furthermore, attribution bias may interact with true neurogenic symptoms to increase impairment, can be facilitated by others (e.g., family, attorneys or healthcare professionals), and can occur intentionally.

Notably, the examinee's presentation and approach to test-taking exist on a continuum from valid to biased. Due to the financial incentive to misrepresent one's optimal performance during neuropsychological examinations in forensic practice, evaluation of the examinee's response validity is a necessary component of the examination. This consideration is reflected in APA General Principle C, which addresses the need to adapt methods to the needs of different populations, and to ensure that assessments, recommendations, reports, and diagnostic or evaluative statements are substantiated by sufficient information and techniques.

Formal assessment of response validity is essential in order to increase the likelihood that interpretation of test data will be based on valid results that reflect the examinee's true abilities and deficits. Neuropsychologists have at their disposal a number of methods for detecting response bias, including measures designed specifically for that purpose, validity scales for personality measures, actuarial approaches for standard cognitive measures, signs

within records, and behavioral observations. (See Martelli, Zasler, Hart, Nicholson and Heilbronner [2001] for a review of methods and considerations for assessing response validity.)

Examiner misattribution and bias also occurs and represents a problematic source of error that can violate the core ethical principle of avoiding harm. Clinicians sensitized to the signs and symptoms of their particular specialty may misdiagnose or over-diagnose problems with inadequate attention to competing explanations. For example, a brain injury expert may diagnose brain injury when symptoms have a psychiatric etiology, while a psychiatrist infers psychiatric etiologies for brain injury sequelae (Martelli, Zasler & Grayson, 1999b). Confounding of appropriate diagnosis causes increased medical costs, inappropriate treatment, treatment failures and even chronic disability in the injured person. These errors can be prevented with comprehensive neuropsychological assessment that integrates data from observation, history and collateral sources with a review of base rates of relevant symptoms (e.g., Gouvier, 1999; Lees-Haley & Brown, 1993; Lees-Haley, Fox, & Courtney, 2001) and careful differential diagnosis to consider all possible explanations for symptoms. Chapman and Einstein (2000) have discussed how biases can occur in the face of uncertainty in medical decision-making. Examiners can display response bias in tendencies to either doubt the sincerity of complaints or accept them uncritically (e.g., McBeath, 2000; Lees-Haley, 1997). There is increasing realization of bias in arbitrators' case perceptions and award recommendations (Eylon, Giacalone, & Pollard, 2000).

Martelli, Zasler and LeFever (2000) have reported preliminary data regarding the common suspicion that examiner's are influenced by compensation and other issues. More compelling evidence of perceived expert witness bias is offered from a Federal Judiciary Committee sanctioned study (Johnson, Krafka & Cecil, 2000) of active Federal judges and lead attorneys who presented the docket cases before them. For both 1991 to 1998, the primary problem with expert testimony was experts who "abandon objectivity and become advocates for the side that hired them" (p5). Mean rating of partisan bias of experts on a 1 – 5 Likert rating scale was approximately 3.7.

Clearly, guidelines such as those proposed by Blau (1984; 1992), Brodsky (1991), Sweet and Moulthrop (1998) and Martelli and colleagues (Martelli, Zasler, & Grayson, 1999a; 1999b), as briefly summarized in Table 2, represent important

recommendations for avoiding bias and promoting objectivity and ethical conduct in forensic contexts. However, when suspected ethical violations are observed in colleagues, carefully deliberated action is indicated.

ADDRESSING ETHICAL VIOLATIONS

Consistent with previously mentioned survey results, it is not uncommon in forensic practice to observe the work of colleagues that appears to be unethical. In order to protect subjects, patients, referral sources, and payors, and to preserve the reputation of the field of neuropsychology specifically and psychology generally, it is necessary to address potential ethical violations when they are observed (Grote, Lewin, Sweet & van Gorp, W.G., 2000). Issues involving competency and objectivity may be the most frequently violated ethical standards. However, caution should be to ensure that perceptions of incompetence or nonobjectivity are not overly reflective of professional or ideological differences. Certainly, there exist widespread differences of opinion in a number of areas of neuropsychological practice. Sensitivity to such differences is paramount. However, the neuropsychologist that practices or makes judgments outside of even these

diverse positions is at risk for ethical misconduct if such practices or judgments cannot be defended through writings in recent research literature. Finally, caution must be exercised with regard to initiating ethical complaints during a trial, since this could represent subtle to not so subtle opportunism, and could produce, or appear to produce, unfair advantage.

The decision regarding whether or not to confront the apparent ethical misconduct of a colleague may be one of the more difficult professional decisions. That difficulty may be related to several factors, including uncertainty about the nature of the behavior and whether or not it occurred, personal feelings toward the colleague, fear of retaliation, and uncertainty about how to address potential misconduct. Notably, a decision-making model for addressing ethical misconduct by colleagues was developed by Deidan and Bush (2002). This procedural model, the Checklist for Reporting Ethical Violations (CREV) has been modified for ease of use in forensic settings and is presented in Table 4. It offers a useful procedure with guidelines intended to assist with determining and pursuing appropriate courses of action in situations involving potential ethical misconduct.

Table 4
Checklist for Reporting Ethical Violations (CREV)

-
- Identify the problem or dilemma.
 - Identify the relevant ethics code and the relevant sections of the code.
 - Identify and consider applicable laws and regulations.
 - Consider the significance of the context and setting.
 - Identify the obligations owed to the subject, referral source, etc, including confidentiality issues.
 - Consider the role played by your beliefs and values, including personal feelings toward the colleague.
 - Consider the significance of the violation.
 - Consider the strength of the reliability and persuasiveness of the evidence.
 - Consult written resources.
 - Consult knowledgeable and experienced professionals or ethics committees of relevant organizations.
 - Consult knowledgeable and experienced professionals or ethics committees of relevant organizations.
 - Consider possible solutions to the problem, with informal resolution a first choice except in more serious situations.
 - Consider the potential consequences of various actions, both positive and negative.
 - Choose a course of action.
 - Implement the decision at the appropriate time.
 - Assess the outcome.
 - Consider and implement additional/alternative courses of action as needed.
-

Adapted from Deidan and Bush (2002).

CONCLUSIONS

Specific training in forensic examinations is not always obtained by professionals prior to performing such evaluations. Further, many practitioners have little training and/or expertise in identifying and coping with the various potential ethical conflicts that arise within the context of evaluations performed within forensic arenas. Ability to identify potential risk areas is the first step in avoiding ethical misconduct. Given competence, the loss of objectivity is the primary risk factor for ethically compromised behavior. In addition to competency and objectivity, lack of familiarity with relevant recent legal cases, new neuropsychological methods and procedures, changes in relevant ethics codes, as well as inconsistencies in some ethical codes and limitations in definitively addressing all complex dilemma possibly encountered, place the examiner at an ethical disadvantage. Ongoing education on the application of ethical principles to forensic practice is a prerequisite to ethical professional behavior.

In order to promote consistently high levels of competent and ethical forensic practice, advances toward establishing contingencies that reinforce objective examinations and testimony is warranted. When ethical misconduct is observed in one's colleagues, appropriate steps should be taken to defend both the consumers of our services and the public's perception of neuropsychology.

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