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Pepperdine University
Graduate School of Education and Psychology

STANDARD OF CARE FOR FORENSIC PERSONAL INJURY EVALUATIONS

A clinical dissertation submitted in partial satisfaction
of the requirements for the degree of
Doctor of Psychology

by

Laura Troolines, M.A.

July 2012

Robert deMayo, Ph.D., ABPP – Dissertation Chairperson

This clinical dissertation, written by

Laura Troolines

under the guidance of a Faculty Committee and approved by its members, has been submitted to and accepted by the Graduate Faculty in partial fulfillment of the requirements for the degree of

DOCTOR OF PSYCHOLOGY

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DEDICATION

I dedicate my work to my beautiful and loving parents, John and Kathie. With their spirit of understanding among all people for humanitarian needs, they personify true empathy, selflessness, and compassion. Their example has truly inspired me to passionately live a life of purpose, service, and leadership. I am forever grateful for their unwavering love, support, and genuine expression of pride in all I do. Thank you, Mom and Dad.

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ABSTRACT

The purpose of this study was to examine the current practice procedures and recommendations for conducting forensic personal injury evaluations. This 2-pronged phenomenological approach examined current practice procedures for conducting personal injury evaluations via a literature review and recommendations from experts to gather information regarding their current practice procedures and recommendations for conducting personal injury evaluations. This dissertation was completed along with another study to explore the development of a standard of care in forensic psychological evaluations. Both studies discussed general issues related to the development of a standard of care in forensic psychological evaluation. However, each study also focused on a specific type of forensic evaluation. This study focused on the development of a standard of care for personal injury evaluations and the other study focused on competency evaluations. A total of 6 licensed psychologists who have completed personal injury and/or competency evaluations were recruited for participation. Qualitative analyses of open-ended responses from the semi-structured interview were assessed in order to aid in understanding the experiences of forensic mental health evaluators and to ascertain whether an enforceable standard of care is necessary to standardize forensic psychological evaluations. The results of the qualitative analyses support expanding the current foundation of forensic mental health evaluation with the implementation of a standard of care. The 3 overarching themes that were prominently discussed in the literature review and reiterated by participant interview data can be constructed around the issues of: proper preparation and presentation of findings to the

legal system, use of psychological testing and appropriate methodology, and mechanical/stylistic issues in report writing.

Introduction

Background of the Problem

The skill-set employed by forensic psychologists in personal injury evaluations is highly valued in the civil justice system (Huss, 2008). As the number of civil cases involving a personal injury claim has grown, there is an ever-increasing need for personal injury evaluations to objectively elucidate the mental health status of litigants (Greenberg, Otto, & Long, 2003). Forensic psychologists have the unique ability to utilize objective, valid and reliable assessments to ascertain the extent to which psychological factors are involved in a personal injury case (Huss, 2008). It is the forensic psychologist's responsibility to ensure that the court be provided with careful, justifiable, and generally-accepted explanations of evaluation results, as the opinion rendered from the psychologist's evaluation can have a substantial impact on decision makers in personal injury trials (Greenberg et al., 2003). However, within the practice of forensic psychological evaluation, there is currently no universally accepted standard of care delineating minimally acceptable standards of professional conduct (Heilbrun, DeMatteo, Marczyk, & Goldstein, 2008). Thus, it is foreseeable that there is a wide variance in the method employed by forensic mental health professionals in conducting a personal injury evaluation, raising reliability and validity issues.

Because a standard of care does not exist for forensic psychological assessment, no specialized set of guidelines is in place to articulate ethically-competent evaluation methodologies that coherently bridge psychological and legal concepts to enhance the reliability and validity of resulting findings (Weiner, Freedheim, & Goldstein, 2003). The field of forensic psychological evaluation needs to acknowledge the inherent sources

of bias and compensate for them in the evaluation process in an attempt to aid in conducting an impartial trial and adequately protect the rights and privileges of all parties to a legal action. Many professionals in the field of forensic psychology echo the sentiment that a conceptual model detailing methods of assessing legal competencies is needed (Goldstein, 2007; Huss, 2008; Nicholson, & Norwood, 2000; Weiner et al., 2003).

Purpose of the Study

The objective of this study was to increase the credibility of forensic mental health evaluation, and provide a theoretical foundation for research that would enhance the reliability and validity of personal injury evaluations for the courts. This was accomplished in a 2-pronged phenomenological approach. In the first phase, the author conducted a thorough literature review addressing:

1. Theoretical and historical framework of forensic psychological evaluation, detailing such issues as: (a) standard of practice, (b) standard of care, (c) professional practice guidelines, and (d) forensic psychological assessment specialty guidelines.
2. Current practice procedures for forensic psychological evaluation personal injury evaluations including: (a) exploration of how a standard of care for a psychology specialty area is developed (e.g., child custody standard of care guidelines).
3. Challenges in creating a standard of care for personal injury evaluations.

In the second phase, the author will interview experts in forensic psychology to gather information regarding their current practice procedures and recommendations for

conducting personal injury evaluations. Major themes emerging from the interviews will be identified. Results from both the literature review and interviews will be utilized to make recommendations regarding a standard of care for personal injury evaluations and the design of future research endeavors to improve the quality and consistency of forensic psychological personal injury evaluations. It is important to note that this study is a part of a conjoining study addressing forensic psychological competency evaluations within criminal law.

Research Questions. The study aims to answer the following research questions:

1. What are the current practice procedures for forensic psychologists conducting personal injury evaluations?
2. What would a standard of care for personal injury evaluations entail?

Literature Review

Historical Influences on Standard of Care. Weiner, Freedheim, and Goldstein, (2003) detail forensic psychology as the professional practice of psychology and its application to civil and criminal law. More specifically, the application of psychology to civil law involves the evaluation of questions related to psychological, or mental injuries, tortuous conduct, child custody and placement, and involuntary civil commitment, among many other applications. The application of psychology to criminal law involves the assessment of criminal responsibility, crime prevention, and competency to stand trial, to name a few.

Contributing to forensic psychology's coming of age, Hugo Munsterberg, student of Wilhelm Wundt, was the first psychologist in America to apply psychology to law (Loh, 1981). He made a seminal contribution to the field with his best-seller *On the*

Witness Stand (1908) in which he detailed the crucial need for the application of psychology to law (Bartol & Bartol, 2005). At the time, Munsterberg was a consultant for the court in two murder trials; however, he never testified directly as the role of psychologists as an expert witness was not yet accepted in American courtrooms (Bartol & Bartol, 2005).

In 1911, Karl Marbe became the first psychological expert to testify in a civil trial. However, it was not until 1921 when the first American psychologist qualified as an expert witness (Bartol & Bartol, 2005). Further developments occurred in the landmark case of *Frye v. United States* (1923), when it was determined by the Federal Court of Appeals that for a technique, assessment, or procedure to be used as evidence, it must be generally accepted within its field. *Frye v. United States* (1923) established the precedent for the use of expert witness in courts.

An era of postwar confidence emerged during the 1940s and 1950s as psychologists became more confident about their contribution to law. After uncertain roots and a stagnant period during the postwar area, forensic psychologists endured an arduous journey and eventually received credence as literature in the field exploded in the 1970s. *Jenkins v. United States* (1962) is a landmark case in which a federal appellate court granted psychologists with suitable training and qualifications, the ability to offer expert testimony regarding mental illness.

In 1993, the U.S. Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* replaced the earlier Frye standard. Within the Daubert standard, the judge becomes a “gatekeeper” of evidence, in charge of evaluating evidence and deciding permission for admittance (Bartol & Bartol, 2005). Thus, Rogers (2003)

cautions forensic psychological evaluators to carefully consider whether or not assessment measures will pass muster under the Daubert standard and related case law that limits expert testimony to scientifically established data. State courts are permitted to utilize their own rules of evidence, however, many deem the federal rules as a just model. Daubert outlined four considerations, or tests for reliability that are widely known as the Daubert factors or the Daubert test. The four considerations for reliability are: testing, peer review, error rates, and acceptability in the relevant scientific community (Medoff, 2003).

Bartol and Bartol (2005) note the tumultuous history between law and psychology and emphasize the disparity between the two professions' personalities as a note of caution to the future maturation of forensic psychology. The authors further elucidate how law generally operates within a conservative and cautious perspective versus psychology leaning toward generalities and speaking of group averages (Bartol & Bartol, 2005). This distinction is imperative to note when considering a standard of care for forensic psychological evaluation because forensic mental health experts regularly span the legal and psychological arenas (Kane & Dvoskin, 2011). Melton, Petrila, Poythress, and Slobogin, (2007) also acknowledge there are disciplinary differences between law and psychology in conceptualizing and fact finding. The resulting paradigmatic clash renders uncertainty and conflict regarding the standard to be applied to forensic psychological evaluation. The authors' further question if forensic psychology should compromise its mode of conducting forensic psychological evaluation to bridge the gap between professions. After all, it is the duty of modern-day forensic psychologists to uphold credibility in the courtroom by imparting a standard of care for forensic

psychological evaluation to further bridge integrity within the multidisciplinary field of forensic psychology.

Forensic Psychological Assessment. Forensic psychological assessment refers to evaluations conducted by mental health professionals to aid legal decision makers via relevant clinical and scientific data in civil, criminal, or family law arenas (Heilbrun et al., 2003). Melton et al. (2007) note how the vast utilities of forensic psychological evaluation procedures have assisted legal decision makers over the years. Within the legal arena there are a host of separate issues, (e.g., civil, criminal, and family) each following a standard derived from statute or case law (Heilbrun, 1992). More specifically, each legal arena is guided by different legal questions to inform the forensic psychological evaluation. Weiner et al. (2003) urge evaluators to be knowledgeable regarding the relevance of statutory and case law in the particular jurisdiction in which the case is being tried, as this is what separates forensic evaluators from general clinical evaluations. Greenberg et al. (2003) further assert that evaluators can unintentionally mislead the court with assessment interpretations based on clinical rather than forensic normed populations. It is the aforementioned caution by Greenberg et al. that is echoed by many forensic psychologists in the field in an attempt to fortify forensic psychological evaluation with a systematic standard of care accurately informing legal decision makers via maximally relevant evaluations (Heilbrun, 1992; Grisso, 2003; Weiner et al., 2003; Goldstein, 2007).

Melton et al. (2007) define an expert in forensic psychology as a professional with specialized knowledge regarding legal standards and issues. The authors further note an expert in the field as someone with appropriate training, acquired knowledge and skills

about a wide range of tasks within the justice system. Ziskin (1981) asserts a forensic psychological expert as a professional who is skilled in evaluating the client on a variety of civil or criminal forensic issues, preparing for testimony, and maintaining a firm grasp of representing a psychological circumstance in a legal framework in court. Over the past 50 years, education and certification in forensic psychology has become more prominent. For example, a professional can achieve diplomate status through the American Academy of Forensic Psychology (AAFP). According to the AAFP, receipt of the Diploma in Forensic Psychology:

The receipt of the Diploma in Forensic Psychology from the American Board of Professional Psychology (ABPP) attests to the fact that an established organization of peers has certified the diplomate as possessing a high level of professional competence and maturity, with the ability to articulate an explicit and coherent rationale for his or her work in forensic psychology. (para. 2)

Reeves and Rosner (2003) point to the fact that most practicing forensic psychologists are not diplomates of AAFP, but rather have been educated through combined practice in the field and independent readings. Psychologists can also be active members of the American Psychology - Law Society, Division 41 (AP-LS) of the American Psychological Association, which is devoted to scholarly practice and leadership in psychology and law. However, Reeves and Rosner state that the demand for forensic professionals doesn't necessitate certification in the field.

Standard of practice v. standard of care. The Committee on Ethical Guidelines for Forensic Psychologists (1991) notes that a standard of practice is a generally-accepted way of doing something in a particular field and it is aspirational in nature. Conversely,

Heilbrun et al. (2008) denote that a standard of care is the usual and customary professional practice in the community. Following the standard of care is mandatory as it is based on judicial constructs establishing minimally-acceptable standards of conduct within a professional discipline. Deviation from a standard of care signifies negligence and thereby exposes a professional to liability (Heilbrun et al., 2008). Whereas following a standard of practice is aspirational in nature, and deviation from reasonable practice does not result in legal liability.

Emerging forensic psychological assessment standard of care. Goldstein (2007) has suggested that a standard of care for forensic assessment is emerging. Goldstein suggests a standard of care for forensic psychological assessment should include: (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007). These same characteristics can be applied to the creation of a standard of care for personal injury evaluations. Kalmbach and Lyons (2006) assert that knowledge of legal standards and adherence to the forensic specialty guidelines and professional ethics codes can be utilized as evidence of a commitment to a standard of care if one's opinion is challenged in court.

Forensic psychological assessment specialty guidelines. Forensic psychology was deemed an American Psychological Association (APA) specialization in 2001, and forensic psychological assessment is an area of specialty practice that combines forensic practice with other areas of clinical specialization. In 1991 the American Psychological

Association and the American Board of Forensic Psychology created Specialty Guidelines in an effort to ameliorate the inconsistency of forensic psychological evaluation (Committee on Ethical Guidelines for Forensic Psychologists, 1991). In 2005, a revision of the Guidelines was established and approved by the American Psychology-Law Society, Division 41 of the American Psychological Association, and the American Board of Forensic Psychology. Nine years later, with the expanding field of forensic psychology, and the need for updated guidelines, a new version is in press. The revision committee, chaired by Randy Otto, included representatives of the American Psychology-Law Society (Division 41 of the APA) and the American Academy of Forensic Psychology. The Guidelines will replace the earlier 1991 version and the developers assert that the revised Guidelines are designed to be educative and to provide a forensic psychologist with more specific and thorough guidance determining professional forensic conduct. The Guidelines provide forensic psychologists with an aspirational model of conducting forensic related psychological services in a manner consistent with the highest standard. However, Otto and Heilbrun (2002) continue to note the inconsistency in the quality of forensic psychological assessment. It is also important to keep in mind that the Guidelines are not enforceable, and are merely aspirational in nature making them subject to diverse interpretations. Thus, there is a need for more strict regulation and clarification of practice standards within personal injury evaluation.

Forensic psychological assessment specialty principles. Heilbrun (2001) proposed 29 principles of forensic psychological assessment that encompass a broad range of issues associated with all types of civil and criminal forensic evaluations. The purpose of his principles was (a) to provide a generalizable approach to training; (b) to

facilitate research; and (c) to promote the development of relevant policy and better practice of the field (Heilbrun, 2001). However, Heilbrun's principles have not been validated through the use of expert judgment. In a recent article, Heilbrun and Brooks (2010) discuss a proposed agenda for the upcoming decade in forensic psychological assessment. There still exists a need to develop a more stringent standard of care to improve quality, ensure best practice, and minimize error in forensic psychological assessment (Heilbrun & Brooks, 2010).

Personal Injury Evaluations.

Huss (2008) notes that personal injury evaluations are a multibillion-dollar business. The primary objective required by law to make a compensable claim in a personal injury case is an indication of mental injury (Melton et al., 2007). Within the legal framework, a personal injury evaluation is classified by the law of torts (Grisso, 2003). Tort law recognizes a claim for monetary damages when one breaches a duty of care owed to another and proximately causes them harm. Furthermore, a tort is a "civil wrong" that gives rise to a remedy in the form of a claim for compensation and is commenced with the filing of a complaint. Greenberg et al. (2003) assert claimants may seek compensation for physical and psychological harm caused by another's tortious conduct. Kane and Dvoskin (2011) compare psychological injury cases to physical injury cases and note how physical injury cases are frequently accepted in court, but psychological injury cases are much more difficult to be tried. The authors note a variety of factors that cause personal injury cases to be under scrutiny. Some concerns include the notion that psychological claims may be feigned with relative ease, and that the scope of the evaluation could be limitless. The first case in which the U.S. Supreme Court

ruled that a psychological injury case could be accepted without a physical injury was in 1993 in the case of *Harris v. Forklift Systems, Inc.*

Melton et al. (2007) note the utility of the Diagnostic and Statistical Manual of Mental Disorders (DSM) as the objective tool evaluators use to indicate mental injury for a compensable claim. However, since claims of psychological harm entail a complex set of jurisdiction issues, it is essential in personal injury evaluations to know how to clarify diagnosis, but it is much more useful to ascertain the degree of dysfunction (Melton et al., 2007). Kane and Dvoskin (2011) explain how the forensic psychologist is relied upon to assist the court by conducting an evaluation that assesses the degree of the plaintiff's psychological claims. Psychological injuries can involve a host of disorders and conditions that may develop after events at claim (Kane & Dvoskin, 2011).

Posttraumatic stress disorder. Melton et al. (2007) note that the constellation of mental effects frequently reported in personal injury evaluations center around posttraumatic stress disorder (PTSD). Also, Huss (2008) asserts personality assessments of individuals claiming head injury need to be accompanied by medical and neuropsychological information in attempt to detail the veracity of the claim. Huss notes the difficulty in verifying PTSD symptoms and other psychological and stress-induced disabilities in which the concern regarding fraud and exaggeration has grown with economic despair.

Malingering. Most symptoms and diagnoses prominent in a personal injury evaluation (e.g., PTSD, head injury) can be feigned or exaggerated due to the presence of secondary gain (citation). It is nearly certain that a forensic psychological evaluator conducting a personal injury evaluation will be asked whether the claimant is

malingering. Even though it is not considered an actual disorder, the Diagnostic and Statistical Manual of Mental Disorders refers to malingering as a clear difference between an individual's claimed stress of disability and objective findings (American Psychiatric Association, 2000). Thus, the duty of the forensic psychological evaluator according to Melton et al. (2007) is to describe the etiology of the supposed injury, establishing each inference with behavioral observations, and then allow the fact-finder to decide whether the claim merits compensation. The assignment of malingering should be used with extreme caution, as the evaluator needs ample data to corroborate this claim. Melton et al. denote the best tool is corroboration via third-party information of the symptoms reported by the individual.

Current practice procedures. Greenberg et al., (2003) credit forensic psychologists for distinguishing themselves amongst the psychology profession by their use of assessment measures to increase the utility of forensic evaluations. As previously detailed, a personal injury evaluation is largely accomplished by examining the nature and extent of an individual's current psychopathology, mental status, and premorbid-versus-current functioning via psychological assessment (Melton et al., 2007). Within the evaluation, the forensic psychologist must evaluate the individual to assess the impact of conduct or events on the individual's mental status, functioning, and prognosis for recovery (Committee on Ethical Guidelines for Forensic Psychologists, 1991; Greenberg et al., 2003; Melton et al., 2007). Thus, a comprehensive personal injury evaluation requires meticulous skill and careful planning by the forensic evaluator.

To adequately address psycholegal issues pertaining to psychological injury, mental status, current functioning, and prognosis, evaluators rely on psychological

assessment instruments to aid in a comprehensive evaluation and to increase the utility of the forensic examination (Greenberg et al., 2003). Grisso (2003) cautioned forensic psychological evaluators against using measures that are invalid instruments for assessing the legal referral questions. This can result in ill-informed decisions being made in the legal arena and subsequently downgrade the possible utility of forensic psychological evaluation (Grisso, 2003).

Standard of care in related psychology specialty: Child custody evaluation.

A review of guidelines and standards for child custody guidelines will be detailed in an attempt to inform the development of a standard of care for personal injury evaluations. Otto, Edens, and Barcus (2000) elucidate how the litigious and adversarial nature of child custody evaluations creates concern for forensic psychological evaluators. In an attempt to diminish the variability within high-stakes evaluations, there are very comprehensive child custody evaluation guidelines promulgated by the Association of Family and Conciliation Courts (AFCC, n.d.), the American Psychological Association (APA) Committee on Professional Practice Standards (1994), and the American Academy of Child and Adolescent Psychiatry (AACAP, 1994). Many states have also standardized child custody evaluations with legally-enforceable standards. For example, The California Rules of Court Title 5 Family and Juvenile Rules (2011) have very specific guidelines that must be followed when conducting child custody evaluations (California Rules of Court, 2011). Also, the State of Massachusetts (Elsen, 2008) has instituted comprehensive guidelines to assist psychologists in the evaluation process.

The guidelines describe in detail the required scope of the child custody evaluation, including what types of data are to be collected and in what manner, how a

written or oral presentation is to be fashioned, ethical considerations for the evaluator, and fee arrangements (Horvath, Logan, & Walker, 2002). The aforementioned guidelines also caution child custody evaluators to be expansive in scope to create an evaluation informed by legal criteria (Otto et al., 2000). Findings from Horvath et al. (2002) content analysis of evaluation practices in child custody cases recommend the use of multiple sources of data collection (e.g., assessment, parent and child interviews, parent and child observations, collateral contacts, and review of records) to aid in detailing a thorough evaluation. The authors detail the complexity involved in evaluating a number of persons (e.g., mother, father, child or children, and potential or actual stepparents) for a child custody proceeding (Horvath et al., 2002) and the importance of a standard of care for ease of administration and maximum utility in court. Similarly, Witt and Weitz (2007) denote the necessity of interviewing collateral informants for personal injury evaluations (e.g., spouse, friends, family members, coworkers) to aid in corroborating the plaintiff's symptom and adjustment history.

The impact of child custody evaluations and the forerunners that established very detailed guidelines to strengthen the field are an important parallel for forensic psychological personal injury evaluations. Furthermore, it is critical that such improvement occur within the realm of personal injury evaluations so that more relevant, reliable, valid, and helpful evidence is provided to the court. Otherwise, personal injury evaluators are failing to fulfill their professional duty and ethical obligation to the court and individuals they serve.

Method

Design

This dissertation was completed along with another study to explore the development of a standard of care in forensic psychological evaluations. In an effort to address both the civil and criminal realms of forensic evaluation, two smaller studies were completed in conjunction with each other. Both studies discuss general issues related to the development of a standard of care in forensic psychological evaluation. However, each study is also focused on a specific type of forensic evaluation. This study is focused on the development of a standard of care for personal injury evaluations and the other study is focused on competency evaluations. A total of 6 licensed psychologists who have completed personal injury and/or competency evaluations were recruited for participation in the joint studies. For ease of conducting preferred in-person interview, the researchers first sent 48 recruitment e-mails (see Appendix C) to diplomates of the American Academy of Forensic Psychology (AAFP) that were noted via the AAFP diplomate website to be in similar geographic areas as the researchers (the Northeast). Also, supervisors at the researchers' training facilities identified experts in the field suitable for participation in the study. All research participants are included in both studies because of their ability to answer general questions related to forensic evaluation and specific questions pertaining to each study. The same general questions were asked of all research participants, as this information is relevant to both studies. In addition, based on their experience, questions were asked to gather information related to their recommendations and practice procedures regarding competency and/or personal injury evaluations. Responses to the specialty-specific questions may be relevant to only one or

both studies, based on their experience with either one or both types of evaluations. All data collected was shared between the two researchers.

The researcher employed a 2-pronged phenomenological approach, including both academic and practical applications to provide an in-depth understanding of forensic psychological evaluations. This in-depth study of experts in forensic psychology is designed to more fully understand the experiences of forensic mental health evaluators and to ascertain whether an enforceable standard of care for forensic psychological personal injury evaluations is necessary to regulate and attempt to standardize practice. The 2-pronged approach consists of: Phase 1 – a critical review of historical and current personal injury practice procedures and the development of a standard of care in a related forensic psychology specialty (i.e., child custody evaluations), and Phase 2 – qualitative semi-structured interviews conducted by both researchers (Laura Troolines and Alexis Bowles) to collect information from licensed psychologists regarding forensic psychological assessment, including both competency evaluations and personal injury evaluations.

The questions in the semi-structured interview were chosen to provide an informational basis and a practical perspective for how forensic psychologists are conducting competency and/or personal injury evaluations. At the outset of the interview, the participant was provided with a definition of a standard of care and the definition of a standard of practice. Because the literature review noted much variability and confusion among professionals' understanding of these ethical terms, the researchers found it appropriate to provide a definition for the construct being assessed in this dissertation study. The research concludes with a discussion of the findings, limitations

of the current study, and directions for future research regarding the necessity of an enforceable standard of care for personal injury evaluations.

Role of Researcher

A 27-year-old Caucasian female researcher in a clinical psychology doctoral program conducted this study for her dissertation. The aforementioned student researcher attends graduate school within the Los Angeles metropolitan area. The researcher has experience as a research assistant in a project utilizing qualitative methodology. She also has experience conducting semi-structured interviews, analyzing quantitative data, has completed her pre-doctoral internship at Bellevue Hospital Center and Kirby Forensic Psychiatric Center, and intends to pursue a career in forensic psychology.

In regard to biases, the researcher understands the impact of her biases regarding the nature of a standard of care for personal injury evaluations and is aware that the role of an interviewer may influence the information garnered from participants. This study is being completed in conjunction with Alexis Bowles. Her dissertation, *The Development of a Standard of Care for Competency Evaluations* can be referred to for additional information.

Participants

For the purposes of this study, an expert in forensic psychology is defined as: a licensed psychologist who considers forensic psychological assessment a significant portion of his or her practice or academic discipline. The expert will have been licensed for at least 5 years.

Six psychologists (4 female, 2 male) ranging in age from 35 to 64 participated in the study. Out of the 6 participants, 4 psychologists have a Ph.D. and 2 have a Psy.D. At

the time of the study, 4 were licensed in New York, one in Illinois, and 1 in Massachusetts. Also, at the time of the study, 3 of the participants were diplomates of the AAFP recruited via e-mail (see Appendix C). The remaining 3 participants were recruited via professional contacts outlined in the methods section. All participants are board certified members of APLS, Division 41 of the American Psychological Association.

When asked about the type of setting in which each psychologist conducts evaluations, 4 participants reported conducting forensic evaluations in all of the following settings: criminal, civil, private practice, and court-ordered. One participant reported conducting court-ordered and private practice evaluations. The last participant reported conducting evaluations in criminal and court-ordered settings. Further narrowing the type of evaluation each participant has completed: 2 psychologists reported conducting both personal injury and competency evaluations, 2 reported completion of only personal injury evaluations, and 2 report only completion of competency evaluations.

Instruments

The study is comprised of two primary phases. The first section delineates the researcher's literature review search strategy.

Phase 1: Literature Review Search Strategy

Key Words: Standard of Care, Personal Injury, Forensic mental health assessment

Databases: Academic Search Elite, Dissertations & Theses, EBSCOhost, ERIC,

Lexis Nexis Academic, PsycARTICLES, PsycINFO

Phase 2: Interview

The second section outlines the interview process in which the researcher will provide a script with semi-structured interview questions for each of the licensed psychologists who consider forensic psychological assessment a significant portion of his or her profession.

Procedure

The researcher sought the approval of Pepperdine University's Institutional Review Board (IRB) and submitted the proposal for consideration and review. The process ensures the wellbeing of potential participants and guarantees a participant understands his or her rights. This study was approved by Pepperdine University's IRB on January 22, 2012.

To answer the first research question, a review of quantitative research and a thematic review of qualitative literature were completed in an effort to assess the current recommended practice procedures for forensic psychological personal injury evaluations. The literature review is based on a search of national databases incorporating integral aspects of forensic psychological evaluations and personal injury evaluations. A theoretical and historical framework of forensic psychology and assessment was completed in addition to a review of ethical components of psychology such as: a standard of care, a standard of practice, and the exploration of a standard of care for a related forensic psychology specialty (child custody evaluations). Finally, the literature review was compiled and further informed the semi-structured interview questions.

To answer the second research question, semi-structured interviews were conducted with psychologists regarding forensic psychological evaluation, including both

competency evaluations and personal injury evaluations. The interview also inquired about participants' adherence to professional guidelines and standards of practice when completing personal injury evaluations. After approval for the research project was granted on January 22, 2012, the primary researcher contacted by e-mail, potential participants from the following sources: diplomates of the American Academy of Forensic Psychology (AAFP, see Appendix C) the American Psychological Association Division 41, (see Appendix D) and additional participants were obtained via professional contacts (see Appendix E). As per the requirements for the research project, an informed consent form (see Appendix F) and nine open-ended general forensic psychological evaluation interview questions were created in addition to four specific questions for personal injury evaluations and six specific questions for competency evaluations (see Appendix H) for use in a semi-structured qualitative interview lasting approximately 45-60 minutes with each participant. Participants were not provided with the interview questions prior to the interview.

The purpose of the interview was to examine the current practice procedures forensic psychologists employ when completing personal injury evaluations. The interview also aimed to assess whether professionals feel a standard of care for conducting forensic mental health personal injury evaluations would be helpful. And, if so, what would it entail? Specifically, open-ended interview questions were asked to prompt forensic psychological evaluators' understanding of the role of personal injury evaluations and his or her understanding of a standard of care for the proposed evaluations.

Interviews were conducted in-person or via telephone, based on the participant's preferred means of communication in order to foster comfort and ease of participation. If the participant preferred an in-person interview, it was conducted at the participant's office. Prior to the interview beginning, the purpose of the study was explained, informed consent was signed, and an explanation regarding the format of the semi-structured interview was given. With participants who preferred to conduct the interview via telephone, informed consent was faxed or e-mailed to the participant for his or her signature. The participant then faxed or e-mailed the signed informed consent back to the researcher. Participants were informed that the interviewer might ask follow-up questions for purposes of adding clarification and depth to the participant's responses. Once the interviews were completed, participants were thanked for their time, and were later given a note of gratitude the week following the interview. Participant audio data was given a code number, and transcribed in preparation for data analysis (see Appendices H - M).

Data Analysis

The comprehensive literature review and analysis of the interviews identified salient themes in the development of a standard of care and personal injury evaluations. The researcher developed domains and constructed core themes within the interviewees' transcripts via a cross analysis of the data. Common themes were clustered and organized from the interviewees' statements and listed to highlight relevant topics.

Results

The semi-structured interview questions posed to expert forensic psychologists yielded responses that reflect similar thematic ideals as those recommended in the

literature for a proposed standard of care for forensic mental health assessment (Conroy, 2006; Goldstein, 2007). Therefore, the results of the interview responses will be categorized by the following themes: (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007). Within each of the themes, the researcher organized questions from the interview that correspond to the content reflected by the overarching category. Reflecting the interview results within these suggested themes allows for a comprehensive presentation of results while also integrating the literature review.

Findings

Ethical conduct. The researcher identified four questions from the semi-structured interview responses that correlate with the construct of ethical conduct. Embedded themes within this construct were: (a) maintaining objectivity, (b) operating only within the role of forensic evaluator, (c) implementation of a standard of care to effectively bridge psychology and law, and (d) cultural sensitivity in differentiating religious, or cultural beliefs from mental illness.

In terms of looking at the first theme, many participants identified objectivity as one of the largest ethical challenges when completing personal injury evaluations. More specifically, participants highlighted the temptation to want to please the retaining attorney. Participant 6 noted the challenge of dealing with pressure from the referral source (see Appendix M). Along these lines, participants also identified the importance

of acknowledging the limits of derived conclusions. When participants were asked how this ethical challenge might be addressed in a standard of care, participant 1 identified a decision-tree-type algorithm as a potentially helpful means to assist forensic evaluators with maintaining objectivity in the midst of multiple ethical challenges (see Appendix H). Participant 2 noted a helpful tactic is trying to conceptualize the case as if retained by the opposing side (see Appendix I).

All participants identified the importance of maintaining objectivity while interpreting the individual's report. Many participants highlighted the possibility of malingering and the importance of considering distortion, or feigning. Also, while maintaining objectivity, many of the participants identified the challenge of operating only within the role of forensic evaluator. For example, most participants identified the importance of confidentiality and informing the individual of the purpose of the evaluation, limits of confidentiality, and that as a forensic evaluator your role is to assist the court.

Similar to Bartol and Bartol's (2005) article that noted how law wants to be precise and definitive about its conclusions, while psychology is satisfied with more general ones, many of the participants noted the differing personalities of psychology and law. For example, participant 4 noted that the field of psychology has "a long way to go in gaining further credibility with the legal system" (Participant 4, April 30, 2012, see Appendix K). Some participants highlighted that the implementation of a standard of care for forensic mental health evaluations would create a structure to which professionals would need to adhere. Participant 1 stated, "In the court, their laws are very black and white and psychology is more gray and judges – they don't wanna hear about

gray” [sic] (Participant 1, February 8, 2012, see Appendix H). To further elucidate this point, participant 1 provided an example of 2 experts deriving contrasting opinions based on the same data (see Appendix H). This participant further stated that without a standard of care, problems like this exist and “this makes psychology look really silly in court” (Participant 1, February 8, 2012, see Appendix H). Summarizing the expressed need for a standard of care, participant 5 stated: “If there was a governing body or something you would be bound to, there would be that external pressure” (Participant 5, April 30, see Appendix L).

Another ethical challenge participants pinpointed is the importance of cultural sensitivity. For example, participant 6 identified that many cultures have beliefs like “voodoo worship” that could be mistaken for psychosis (Participant 6, May 1, 2012, see Appendix M). Similarly, other participants noted the importance of evaluators to be culturally competent. More specifically, participant 3 said, “It’s imperative for the evaluator to be culturally competent to be able to tease apart symptoms of a mental illness, versus cultural idioms an individual may present with” (Participant 3, March 3, 2012, see Appendix J).

Necessary knowledge of the legal system. Underscoring ethical responsibilities of professionals, many participants highlighted the duty of the forensic psychologist to have sufficient knowledge of the legal process. For example, participant 1 stated the importance of having a thorough understanding of the case law associated with the type of forensic evaluation to be performed (see Appendix H). Furthermore, participant 3 asserted the necessity of the forensic psychologist to have sufficient awareness of laws in the jurisdiction in which he or she practices, and education on the precedent legal cases in

that state (see Appendix J). Participants also linked their choices of psychological assessments to what is known to stand up to the scrutiny in the courtroom. For example, participant 3 stated “my basic battery for measuring different constructs is based on: research, what stands up in court, and my own clinical experience” (Participant 3, March 3, 2012, see Appendix J).

Use of appropriate methodology. Participants were asked about the use of psychological testing when conducting personal injury evaluations. The researcher also inquired about the construction of the battery of tests, as well as what methods the participant utilizes to assess malingering, if any. All participants noted the use of psychological testing with a flexible battery format that is informed by the referral question. Participant 3 linked the use of appropriate methodology with a professional responsibility to the ethics of the field (see Appendix J). Participant 2 clearly outlined how most psychological testing is based on the need to clarify (a) test-taking style/response bias e.g., malingering or minimization, (b) diagnostic questions, (c) cognitive functioning, and (d) specific psycholegal issues (e.g., psychopathology, see Appendix J).

In terms of malingering, five out of the six participants stated that they always use psychological testing to clarify test-taking style/response bias. Participant 1 stated that assessing for feigning and exaggeration is crucial because it is a prominent issue that is pinpointed during cross-examination in court (see Appendix H). Participants responded similarly and stated that they administer malingering assessments at the outset of the evaluation. Participant 6 even stated that from the minute the evaluation begins and throughout the duration, malingering is at the forefront of the evaluation (see Appendix

M). This participant referenced the notion that secondary gain plays a major role in forensic psychological evaluations. Most participants' stated use of similar measures to assist with the detection of malingering, such as: self report inventories: the Minnesota Multiphasic Personality Inventory (MMPI-2), Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF), Personality Assessment Inventory (PAI), and clinician-rate measures such as the Structured Inventory of Reported Symptoms (SIRS). Also, when suspicion is raised some participants mentioned the use of cognitive testing such as the Test of Memory Malingering (TOMM) or the Validity Indicator Profile (VIP). Participant 1 also endorsed use of brief measures used to assess malingering such as the Rey 15-Item Memory Test, the Dot Counting Test, and the Miller Forensic Assessment of Symptoms Test (M-FAST, see Appendix H). In contrast to the other 5 participants, participant 5 reported only assessing for malingering if there is a question about the genuineness of the symptomology presented (see Appendix L). However, similarly to the other participants, this expert forensic psychologist endorsed use of the M-FAST, the SIRS, and the TOMM when a question of feigning does arise.

Along with the detection of malingering, many participants noted use of certain self-report measures such as the MMPI-2, MMPI-2-RF, and the PAI to assist with diagnostic questions. Other participants noted use of psychological testing to assess cognitive abilities, personality functioning, and the degree of impairment from traumatic brain injury. For example, participants 1 and 3 endorsed use of a Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) to assess cognitive functioning (see Appendices H & J). Also, participant 5 noted the importance of neuropsychological

testing for personal injury evaluations and stated how traumatic brain injury is often a presenting issue in many personal injury cases (see Appendix L).

Inclusion of information from a variety of data sources. All 6 participants noted the imperative nature of collateral information to personal injury evaluations. In regard to third party information, participant 1 stated it is a data source “I don’t ever want to go into an evaluation without having” (Participant 1, February 8, 2012, see Appendix H). Participant 6 asserted that the role of being overinclusive when gathering third party data is preferable to not gathering collateral information (see Appendix M). Participant 4 added that information derived from collateral data sources has often pinpointed other areas that may need additional focus (see Appendix K). For example, if a family member mentions a salient personality style, it may be relevant to explore this area with further questioning in a clinical interview, or additional psychological testing.

Participants reported seeking a variety of data sources to corroborate information for a personal injury evaluation. Participant 2 noted that third party informants could help validate claims of functional impairment and assess malingering (e.g., by providing evidence of higher functioning outside of the litigation context, see Appendix I). More specifically, participants acknowledged seeking collateral information from a variety of current and historical records such as medical, psychological, and school records. Participants also reported gathering information from the patient’s treatment providers, family members, and past evaluations of any context.

Awareness of relevant empirical research. There were a variety of responses from interview participants that detailed the relevance of empirical research. Participant 6 cited one of the most common errors made when conducting forensic psychological

evaluations is giving opinions not based on empirical research (see Appendix M). Most notably, participants reported the importance for psychological assessment measures to be documented in empirical research as efficacious to assess the construct being tested. For example, participant 1 pointed out the lack of empirical validity and reliability in making large-scale opinions based on some projective tests like the House-Tree-Person (HTP, see Appendix H). This participant further connected how a lack of empirically researched assessments in court can make psychology look “very silly” in the courtroom and that it is a disservice to the reputation of psychologists and the science of psychology (Participant 1, February 8, 2012, see Appendix H). Participants noted how this can harm the person being evaluated and interfere with the cause of justice. Also, participants 1, 3, 4 reported the importance of using more than one measure when testing a construct (see Appendices H, J, & K). Many of the participants reported evaluation of patients from diverse cultural backgrounds. Participant 1 further noted the importance for assessment instruments to be normed on the patient’s culture (see Appendix H).

Proper preparation and presentation of findings to the legal system.

Participants 1- 4 have completed personal injury evaluations. The average number of personal injury evaluations conducted by this sample of participants was 90. The researcher will highlight key phases, from preparation for the evaluation to testifying in court, emphasized in conducting these evaluations. Interview participants were asked to inform the researcher exactly what they do when conducting a personal injury evaluation. They were prompted to guide the researcher through the different phases, from the referral process to the completion of the evaluation including the level of structure in interviews. Each participant was further asked if he or she follows a standardized format.

Also, participants were prompted to provide the researcher with some of the core tests utilized in personal injury evaluations. Participant 2 organized the steps of the evaluation process into three major phases, which will also be helpful for representing the information here (see Appendix I). The three phases are: (a) pre-evaluation preparation, (b) evaluation, and (c) post-evaluation. Within the first pre-evaluation phase, all participants reported the first step is ensuring comprehension of the referral question. Participant 1 stated how essential it is to really take the time in discussing the referral question with the attorney (see Appendix H). This participant said it is often helpful to ask the attorney what he or she hopes to accomplish with the proposed evaluation. Participant 2 continued on and noted the importance of negotiating the fee, and discussing the timeline for completing the evaluation (see Appendix I). Next, all participants stressed the importance of conducting a thorough record review. For example, participant 1 stated the need to collect as much information as possible, from as many third party sources available. Just prior to the evaluation, participant 4 reported preparing a qualified language interpreter if needed, and noted taking the time to become educated about the patient's culture, presenting problem, and gathering any assessment measures that may be useful (see Appendix K).

In the second phase, all participants identified key steps for the evaluation of personal injury. First, participant 2 reported the need for informed consent prior to beginning (see Appendix I). Then, participants 2 and 4 conduct a mental status examination followed by a clinical interview highlighting social history, employment history, psychiatric history, and inquiring about any problems (medical or psychiatric) prior to the injury (see Appendices I & K). Then, participant 4 gathers a detailed review

of incident(s) that led to the injury, subsequent functioning, and changes in lifestyle (see Appendix K). Participant 4 noted the necessity of capturing the details of the injury because jurisdictions differ on what types of injuries entitle a plaintiff to compensation (see Appendix K). Lastly, participants reported psychological testing as appropriate to the referral question. Participant 1 emphasized the importance of understanding a patient's pre-morbid level of functioning in personal injury evaluations (see Appendix H). This participant noted that the Wechsler Test of Adult Reading (WTAR) is the best measure for assessing one's pre-morbid level of intelligence. The participant further stated that reading is one of the most robust predictors of intelligence because it is less impacted by neurological insults or substance abuse (see Appendix H). All participants noted use of a WAIS-IV and MMPI-2. Participants 1 and 3 reported routine use of the TOMM.

During the third phase, participants reported post-evaluation tasks that are relevant to personal injury evaluations. For example, all participants reported taking time to call collateral sources and document information gained. Additionally, participant 2 stated scoring and interpreting psychological test data is next (see Appendix I). Lastly, participant 2 mentioned contacting the attorney to discuss the case formulation and to determine if a report is needed. Participant 4 emphasized discussion of the clinical formulation of the injury within the report (see Appendix K). More specifically, this participant reported the importance of explaining the diagnoses made, including any pre-existing illness. This is followed by a formulation of the causal connection therein discussing etiology of the injury, and consideration of potential alternative causes. Lastly, participant 4 opined that a discussion of the prognosis and opinion should go in

the report. Participant 2 noted that deposition and testimony (if applicable) are the last steps in the final phase of personal injury evaluation.

Adherence to an expected threshold of quality. This final theme emerged from participants' responses regarding the standards/guidelines they follow when completing personal injury evaluations. Four out of 4 participants that endorsed completion of personal injury evaluations stated a standard of care would be helpful to them. For example, participant 1 aptly stated that more specific guidelines would effectively bridge psychology and law. This would delineate expectations that attorneys and courts should expect, and also assist psychologists in fulfilling their professional duty/duties in assisting the patient in an evaluation that affects their life and liberty (see Appendix H).

Participant 1 added that a standard of care for personal injury evaluations would minimize the "gray area," or ambiguity in which psychology is often criticized in the courtroom (Participant 1, February 8, 2012, see Appendix H). The participant who said a standard of care would not be particularly helpful in his or her practice did maintain that it would "bolster the credibility of our profession" (Participant 3, March 3, 2012, see Appendix I). This participant further stated that the implementation of a standard of care would help attorneys know what a quality evaluation should entail.

When asked what a standard of care for personal injury evaluations would entail, participants pinpointed that each of the steps they detailed in their current approach to evaluations is critical. All participants stressed the importance of collateral information, the use of psychological testing, and a keen understanding of the referral question.

Discussion

In an attempt to enhance the reliability and validity of forensic mental health assessment, this exploratory study utilized a sample of psychologists who consider forensic personal injury or competency evaluations a major portion of their profession. The goal of this dissertation study was to more fully understand the experiences of forensic mental health evaluators and to ascertain whether an enforceable standard of care is necessary to standardize forensic psychological evaluations. The researcher and a lab partner employed a 2-pronged approach, consisting of a literature review to comprehend the theoretical and historical framework of forensic psychological evaluations, and qualitative semi-structured interviews to more fully understand current practice procedures for these evaluations. The researcher also designed the study to aid future research endeavors in improving the quality and consistency of forensic psychological personal injury evaluations. Qualitative analyses of open-ended responses from the semi-structured interview were assessed in order to aid in understanding the aforementioned research questions. It's important to note that at the outset of the interviews, the expert forensic psychology participants reported confusion regarding the difference between a standard of care and a standard of practice. This confusion about interchangeability of these two vastly different ethical terms was also represented within the literature review (Heilbrun et al., 2008). Using this terminology interchangeably creates confusion about what is necessary for conducting a thorough personal injury evaluation.

In terms of the big picture, overall findings support expanding the current foundation of forensic mental health evaluation with the implementation of a standard of care. Because current practice procedures for personal injury evaluations are delineated

by an evaluator's ethical practice, a framework must be developed for conducting personal injury evaluations. In an attempt to minimize potential legal altercation, enhance the credibility of forensic psychological personal injury evaluations, and thereby protecting the individual to an impartial evaluation, a framework delineating the key components needed in a personal injury evaluation could ameliorate confusion about expectations for these evaluations. Many of the themes derived from the interviews link to themes represented within the literature review. Core findings from interview data and prominent literature review findings denote that a standard of care needs to be developed for flexible-approach evaluations. The three overarching themes that were prominently discussed in the literature review and reiterated by participant interview data can be constructed around the issues of: proper preparation and presentation of findings to the legal system, use of psychological testing and appropriate methodology, and mechanical/stylistic issues in report writing.

First, proper preparation and presentation of findings to the legal system was emphasized in both the literature review and participant interview responses. Bartol and Bartol (2005) noted differences in the *personalities* of the fields of law and psychology. The legal field is conservative, focusing on careful and definitive conclusions. Psychology, on the other hand, is more concerned with generalities and group averages. Many study participants had similar feelings about the differences between the two fields. Participants further emphasized that a standard of care for personal injury evaluations would aid in bridging the psychological and legal worlds while enhancing the reliability and validity of evaluations. A further implication of this observation is that evaluations designed to protect civil litigants, or defendants' rights in the forensic services system

should be clearly articulated in a standard of care. This standard of care would provide a clear model for judges, lawyers, forensic evaluators, and those whom the civil and criminal justice system aim to serve. In this way, the study serves as further evidence that a standard of care for forensic mental health personal injury evaluations would be useful. Moreover, this researcher postulates that a standard of care would bolster the credibility of forensic psychological evaluation in the courtroom.

Second, the use of psychological testing and appropriate methodology was highlighted. Therefore, it is important for a standard of care to outline that psychological assessment measures utilized must meet the standards of evidence for the jurisdiction in which the evaluation is being conducted. Also, the literature and interview participants recommended use of two assessment measures (at minimum) to measure each psychological construct to be assessed. Furthermore, participants highlighted the importance of using assessment measures that meet the qualifications for the rules of evidence. Lastly, because malingering/feigning is a core issue dominated in personal injury literature and reiterated by participant data, it should be noted in a future standard of care as an element that must be assessed.

It should also be noted in a standard of care that the evaluator has the duty to explain in the personal injury report the reasons why an assessment measure was given and what purpose it serves for the evaluation. For example, many studies in the literature review cautioned forensic evaluators about the use of invalid assessment instruments for assessing the legal referral question (Goldstein, 2007). Many participants highlighted this ethical concern and stressed the use of appropriate assessment measures properly normed for key patient characteristics (e.g., culture, socio-economic status, language).

Greenberg et al. (2003) further assert FMH evaluators can unintentionally mislead the court with assessment interpretations based on clinical rather than forensic normed populations. It is the aforementioned caution by Greenberg et al. that was echoed by many of the participants in this study.

Lastly, a third major theme consistent in the literature review and participant interview responses was ethical considerations throughout the evaluation process. For example, all expert psychologists that were interviewed emphasized the importance of utilizing multiple collateral contacts to aid in detailing a thorough evaluation. Further connecting this finding to the literature review, this researcher the origins of a standard of care for child custody guidelines were researched in an attempt to inform a standard of care for personal injury evaluations. Within the literature, child custody evaluators were cautioned to be expansive in scope (Otto et al., 2000) and use as many sources of data collection as possible (Horvath et al., 2002).

Limitations

The researcher is cognizant of the study's limitations. The following limitations are noted:

1. The sample of participants may not be representative of the larger population of psychologists who consider forensic psychological evaluation a significant portion of his or her profession. Because this dissertation is designed to be an exploratory study, it is intentionally focused on a small sample to identify important themes or issues, which can then be further assessed, or replicated in future studies. However, with such few participants, results are likely not stable, and may fluctuate

dramatically if an additional participant's interview data were added.

Additionally, the majority of participants represent jurisdictions utilizing the Daubert standard of evidence admissibility, further limiting the generalizability of the study.

2. The study is bound by general limitations of using a semi-structured interview with open-ended questions, such as: (a) in a telephone interview, the researcher (interviewer) may guide, or bias the participant's responses with her behavior or cues (e.g. verbal affirmations in agreement with interviewee), (b) participants may give slanted or inaccurate responses to portray themselves differently, or in a positive light (e.g. social desirability), and (c) the semi-structured interview format only reflects participants' perceptions of phenomenon investigated.
3. Also, inherent in the limitations is that each state has different admissibility standards (e.g., whether they use Frye or Daubert), and the participants in this study are primarily from the Northeast area of the United States. Therefore, the sample cannot be seen as representative of experts in forensic psychology across the United States.
4. Additionally, the researcher that completed this dissertation study is not a licensed psychologist practicing in the field of forensic psychology. As a result, the researcher may have been more apt to find evidence in the participants' interview data that is supportive of the proposed research questions than a licensed professional in the field.

Future Research

There are a number of important implications for future research to consider. Overall, this dissertation study overwhelmingly supports the notion that a standard of care for personal injury evaluations is needed. Results from the literature review and expert interview data represented major themes that would assist the creation of a standard of care. Therefore, future research should aim to create a basic framework for a standard of care. First, the process of gathering a national sample utilizing multiple participants from many sources (e.g., multiple diplomates from the AAFP, whom arguably have the highest caliber of expertise in forensic psychology) may ensure a more diverse group to generalize results. Future studies to bolster the notion that a standard of care is needed may even compare interview responses from AAFP members and forensic psychologists without any specialty designation. Also, seeking a more widespread sample would guarantee representation of participants that conduct evaluations based on different jurisdictions (e.g., Frye or Daubert).

In addition, a next step is to operationalize the different themes that emerged from this study and consider quantitative methods to either corroborate or expand the present findings. Eventually, this type of research may produce a standard of care, providing the forensic psychological expert information in written form that is needed to satisfy ethical obligations, and provide a framework for how to complete the evaluation in a logical and defensible manner. Additional empirical investigation in this area would further strengthen the field of forensic mental health personal injury evaluation. The creation of a standard of care for personal injury evaluations would ultimately bridge psychology and law, assist the fact-finder, and ultimately the patient via maximally relevant evaluations.

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APPENDIX A

Protecting Human Research Participants – NIH Web-based Training Certificate

<http://phrp.nihtraining.com/users/cert.php?c=416636>

Please see attached for printed certificate of completion of human participants training.

APPENDIX B

AAFP Listserv Recruitment Material

FOR LISTSERVS:

ATTENTION ALL AAFP MEMBERS:

**You have been invited to participate in a 45-60 minute
CONFIDENTIAL interview about the development of a
STANDARD OF CARE for FORENSIC EVALUATIONS of
COMPETENCY and/or PERSONAL INJURY**

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

We are seeking licensed psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

This research study is conducted by a doctoral student in clinical psychology at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Laura Troolines, at (XXX) XXX-XXXX or laura.troolines@pepperdine.edu or Alexis Bowles at (XXX) XXX-XXXX or alexis.bowles@pepperdine.edu. All correspondence is strictly confidential. This research is supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology. He may be contacted at rdemayo@pepperdine.edu.

Thank you for your consideration.

APPENDIX C

AP-LS Listserv Recruitment Material

FOR LISTSERVS:

ATTENTION ALL AP-LS MEMBERS:

**You have been invited to participate in a 45-60 minute
CONFIDENTIAL interview about the development of a
STANDARD OF CARE for FORENSIC EVALUATIONS of
COMPETENCY and/or PERSONAL INJURY**

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

We are seeking licensed psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

This research study is conducted by a doctoral student in clinical psychology at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Alexis Bowles at (XXX) XXX-XXXX or alexis.bowles@pepperdine.edu or Laura Troolines at (XXX) XXX-XXXX or laura.troolines@pepperdine.edu. All correspondence is strictly confidential. This research is supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology. He may be contacted at rdemayo@pepperdine.edu.

Thank you for your consideration.

APPENDIX D

E-mail Recruitment Letter

FOR E-MAIL DISTRIBUTION:

Hello,

We are doctoral students in clinical psychology at Pepperdine University in Los Angeles, supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology.

We are working on our dissertation and are inviting clinical psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration to participate in a confidential interview about a STANDARD OF CARE for FORENSIC COMPETENCY and/or PERSONAL INJURY EVALUATIONS. It will take approximately 45-60 minutes to complete the interview.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

This research study is conducted by a doctoral student in clinical psychology at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Alexis Bowles at (XXX) XXX-XXXX or alexis.bowles@pepperdine.edu or Laura Troolines at (XXX) XXX-XXXX or laura.troolines@pepperdine.edu. All correspondence is strictly confidential.

Thank you for your consideration.

Alexis Bowles
Doctoral Candidate, Pepperdine University

Laura Troolines
Doctoral Candidate, Pepperdine University

APPENDIX E

Sample Informed Consent

INFORMED CONSENT FOR PARTICIPATION IN RESEARCH ACTIVITIES

Participant: _____

Principal Investigators: Laura Troolines, M.A.

Title of Project: Standard of Care for Forensic Mental Health Personal Injury Evaluations

1. I _____, agree to participate in the research study being conducted by Alexis Bowles and Laura Troolines under the direction of Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology, Pepperdine University.
2. The overall purpose of this research is: to inform the development of a standard of care for Forensic competence and personal injury evaluations.
3. My participation will involve the following: Providing my opinion to questions regarding my forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.
4. My participation in the study will last approximately 45-60 minutes. The study shall be conducted in-person or over the telephone. Out of respect for my time, the interviewer may redirect me to the interview questions in an effort to keep the interview within the allotted time frame.
5. I understand that no direct benefits can be assured. However, the possible benefits to myself or society from this research are: to increase the credibility of forensic psychological assessment and to enhance the reliability and validity of competency and personal injury assessments for the courts. I may also feel a sense of satisfaction from participating in this research study.
6. Participation in this study poses no more than minimal risk. However, I understand there are minor risks or discomforts that might be associated with this research. These risks include: Potential inconvenience due to the 45-60 minute time commitment, boredom and fatigue. Additional risks include the possibility of discomfort discussing professional practice standards, feeling self-conscious expressing my personal opinions on the subject matter, and unease describing my specific practice procedures. To mitigate such risks, I could take a break, not answer the question, or end participation in the study.
8. I understand that I may choose not to participate in this research.

9. I understand that if I disclose any potential unethical practice(s), the interviewer will consult the dissertation chairperson, Dr. Robert deMayo for guidance in handling the matter.
10. I understand that my participation is voluntary and that I may refuse to participate and/or withdraw my consent and discontinue participation in the project or activity at any time without penalty or loss of benefits to which I am otherwise entitled.
11. I understand that the investigator(s) will take all reasonable measures to protect the confidentiality of my records and my identity will not be revealed in any publication that may result from this project. The confidentiality of my records will be maintained in accordance with applicable state and federal laws. Under California law, there are exceptions to confidentiality, including suspicion that a child, elder, or dependent adult is being abused, or if an individual discloses an intent to harm him/herself or others.
12. I understand that the investigator is willing to answer any inquiries I may have concerning the research herein described. I understand that I may contact Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology if I have other questions or concerns about this research. If I have questions about my rights as a research participant, I understand that I can contact Jean Kang, manager of Pepperdine University's IRB at (310) 568-5753 or gpsirb@pepperdine.edu.
13. I understand to my satisfaction the information regarding participation in the research project. All my questions have been answered to my satisfaction. I have received a copy of this informed consent form, which I have read and understand. I hereby consent to participate in the research described above.

Participant's Signature

Date

Witness

Date

I have explained and defined in detail the research procedure in which the subject has consented to participate. Having explained this and answered any questions, I am cosigning this form and accepting this person's consent.

Principal Investigator

Date

APPENDIX F

Pre-Interview Background Questions

1. Age

- 22 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and Over

2. Gender

- Male
- Female

3. Type of degree

- Psy.D.
- Ph.D.
- Ed.D.
- or other (please specify)

4. State in which you are licensed?

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

6. Do you conduct personal injury evaluations, competence evaluations or both?

7. How many personal injury and/or competence evaluations have you completed?

APPENDIX G

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?
2. What standards/guidelines do you follow when completing forensic psychological evaluations?
3. Have you completed personal injury evaluations? If so, how many? Have you completed competency evaluations? If so, how many?
4. What guides you to test or not to test when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

5. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?
6. How might these challenges be addressed in a standard of care?
7. What role do diversity factors play in forensic evaluations and how are they addressed?
8. Do you assess for feigning and exaggeration? When, why, and how?
9. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Specialized Personal Injury Evaluation Questions

Do you conduct Personal Injury Evaluations? If so, ...

1. Describe your approach and methods to evaluate personal injury.
 - What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?
2. What would a standard of care for a personal injury evaluation entail?
3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?
4. How would a standard of care be helpful to you in conducting personal injury evaluations?

Specialized Competency Evaluation Questions

Do you conduct Competency Evaluations? If so, ...

1. Describe your approach and methods to evaluate competency.
 - What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the

assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

2. What would a standard of care for a competency evaluation entail?
3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?
4. Do you express the ultimate opinion in your reports?
5. How would a standard of care be helpful in clarifying the “ultimate issue” issue?
6. How would a standard of care be helpful to you in conducting competency evaluations?

Closing Questions

1. How do you define an expert?
2. Is there anything else you would like to add?

APPENDIX H

Subject 1 Interview Transcript

Pre-Interview Background Questions

1. Age

22 to 34

35 to 44

45 to 54

55 to 64

65 and Over

2. Gender

Male

Female

3. Type of degree

Psy.D.

Ph.D.

Ed.D.

or other (please specify)

4. State in which you are licensed?

New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

All

6. Do you conduct personal injury evaluations, competence evaluations or both?

Both

7. How many personal injury and/or competence evaluations have you completed?

10 personal injury

200 competency

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

Well, there are a lot of different areas where this is significant. I think that the field of forensic psychology is very much in its infancy in a lot of ways, especially for the complex forensic questions that come up. I think some things that stand out for me right away are issues related to culture. For example, for certain assessment instruments may not be validated with the person's culture. And the decisions from forensic evaluations affect people's life and liberty.

Regarding malingering and detecting deception, I think that people say that with any sort of forensic question, you need to rule out malingering to see if the person is being genuine. I think that's something that's really important as far as standard of care goes for any forensic assessment. And then, that gets even more complicated because you have to decide what tests to use, what is significant as far as the referral question, the

complicated nature of people malingering, the dynamic nature of it, and how that can be really challenging to sort that out. I've seen a lot of unfortunately bad evaluations over the years, of people just not doing their homework, or people who don't have the qualifications to do some of these forensic assessments, and the court still seems to allow them surprisingly. So, I think an outlined way of assessing malingering is important for a standard of care for forensic psychological evaluation.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I usually always do psychological testing in my evaluations. I find that often times, when I'm asked to do evaluations, it's because they want a psychologist who can do certain psychological testing to sort things out. Some of the competency evaluations maybe not so much because they're very straightforward, and in my opinion there aren't great psychological tests to assess competency. However, with most competency evaluations in context of a state hospital where I work, malingering and intelligence testing has been done already. But, if I'm in my private practice, I will always do psychological testing to look at the person's cognitive ability, any sort of feigning that may be going on with the individual, and maybe have a general sense of their personality (what kind of individual they are – e.g. in personal injury evaluations, I like to give personality measures to see if it's in their nature to try and exaggerate, or to try to deceive a situation).

Sometimes, it's just a matter of time in a situation (e.g., how much time do I have to do an evaluation). Depending on the time I have to conduct the evaluation, I may choose abbreviated measures versus a full version of something. But, I rarely have a fixed battery that I do.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Well, I guess one of the biggest issues that I face with evaluations is balancing ethical dilemmas. For example, preserving test security and the needs of the court. A lot of times, defense attorneys want me to send copies of raw data to the courts, so that the court can look at the raw data. So, the importance of educating the legal side of forensics about the implications of sending raw data is an issue.

I'm also struck when individuals admit to committing crimes in competency evaluations and you don't ask them to tell you this information and the importance of not including that in reports. For example, any admission of guilt - it's important to uphold the context of 'what are they saying you did, versus what did you do' and making sure you balance your role and to not step outside of your role. It's important to make sure that the specific task that you've been asked to do, you just follow that and not deviate from it.

5. How might these challenges be addressed in a standard of care?

What comes to mind is the Slick criteria for malingering in neuropsychology, which is something that would be helpful in our field. For example, it would be helpful to have some sort of algorithm for doing evaluations, e.g. when you do this type of evaluation you start here, and this brings you to here. Like a decision tree type situation, and work your way down. A standard of care is something I feel is really important for any type of clinician. It's important to be well versed in all types of assessment if you may have to conduct them. It's important to stay up-to-date on current practice, research, and the utility of certain instruments (good and bad), and educating the court based on the field's current knowledge as you progress in the field.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

I find these challenges come up a lot. Especially in private practice, it's not always as clear-cut because I may only have three to four hours to meet with someone in the community. However, with the luxury of time in state hospitals it's easier. Some issues that readily come to mind, are people that don't speak English. For example, I did some Miranda evaluations with a number of individuals from other countries that had no formal schooling and it was difficult to assess one's intelligence in relationship to understanding Miranda rights when they're from other countries. Also, with testing – if you have someone who's mentally retarded, can you give them certain intelligence tests. And how do you know if they're faking? Or not faking being mentally retarded? So it becomes kind of a circular argument and you do the best you can, of course.

Another huge thing I see a lot is, no matter what opinion you come up with, often times another expert will then come in and give a diametrically opposed argument to your argument. And sometimes, with the same data – which is a real problem for a standard of care. How can we both come up with a different opinion with the same data, and seeing the same person? That's a huge issue that makes psychology look really silly in court. In the court, their laws are very black and white and psychology is more gray and judges they don't wanna hear about gray. They want to know yes, or no. And then if an expert does a house-tree-person and makes a decision based on how the individual drew their tree that they should go with this parent or that parent makes us look very silly. Face validity.

So this comes up a fair amount with people from other countries in our American criminal justice system.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes, in any sort of forensic question – I'll address feigning. Usually at the outset of the evaluation, I'll assess if the person is being genuine with me. Why? Because, it is a huge cross-examination issue. For example, when they ask you how do you know that this person is telling you the truth, how do you know that your assessment is accurate? Did you rule that out?

In the state hospital I work at, 20% of individuals are feigning in some way. The importance of sorting out the feigning in different contexts. E.g. are they feigning because they want to come here for certain amenities that we have, or are they feigning to get out of their case. Also, as I said before, there's a significant dynamic nature to feigning. For example, one day they get here, realize we don't have cigarettes, and decide they want to get back to Rikers Island. So, what's important to them in that way.

How? I usually always do a TOMM and a SIRS if I can. I've found that if I'm pressed for time, I'll start with an MFAST to see where I'm at and if the SIRS will be helpful. The SIRS can be time consuming, but I always do a TOMM. In more complicated cases, as far as when I'm looking at cognitive aspects, I'll do a VIP (Validity indicator profile). I find that test to be excellent. Although, sometimes not always jiving with the TOMM as far as results in my experience. Sometimes, I'll do some brief tests, depending on the nature of the evaluation. For example, the Rey 15 item, the Dot Counting test. And, then of course I find doing an MMPI-2-RF to be very helpful as far as the imbedded exaggeration of psychopathological symptoms. So, definitely the MMPI as far as a personality inventory. We've been using the RF a lot more, because half the questions make a big difference with a lot of these guys. As far as their attention. PAI, I don't find it very helpful for identifying feigners.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

It could be very helpful. It's something that I don't ever want to go into an evaluation without having third party information. If I know I'll only have a couple of hours with an individual, data that supports or goes against my final opinion could be really helpful. Any, and all information would be helpful (medical, psychiatric, school records).

Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

Starting out, I want to gather as much information as possible, gather any sort of collateral records, really work with the attorney to understand the referral question (e.g., what are you hoping to accomplish by this evaluation?). If it's something related to one's functioning as a result of some sort of injury, obviously I want to understand their premorbid level of functioning, so how were they before this injury, or accident and how are they functioning currently? I have found that the WTAR is the best measure for assessing one's premorbid level of intelligence. Reading, being one of the most robust predictors of intelligence, being less impacted by neurological insults, or substance abuse (which we tend to see a lot). But, also just collateral. What was this person like? What's their adaptive functioning like? Not doing a formal VINLAND measure, or anything like that, but just finding out how their functioning was before this injury happened. Collateral is really important. I usually do a full WAIS-IV on someone, maybe a TOMM

as well, and an MMPI as a standard battery to start out with. But in my experience, with personal injury, most cases get sorted out without going to trial. There are far more issues in court with competency, as far as contesting findings.

2. What would a standard of care for a personal injury evaluation entail?

I think similar to any sort of forensic assessment, it is really important to make sure that one is as comprehensive as possible with any sort of collateral information, looking at the significant domains that are imperative to the evaluation (e.g., cognitive functioning, personality, feigning) are all very important to understand the case. I think having a rounded ability to pull from any sort of assessments that may be appropriate to the evaluation is key. You can't be limited in your knowledge of assessments, and how to apply appropriate tests to the nature of the evaluation.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

I think, any sort of massaging of data (making data fit into a situation while negating other sort of potential information). I've also seen people do things with data that is not a standard practice, that is not appropriate do be done in certain situations. And, of course you always have to balance out that you did something, it wasn't part of the referral question, you're not trying to hide it, so you need to make a reference of it in the report without going on and on in detail. Sometimes defense attorneys will say, "Well why'd you do this test?" And, it's often challenging in court to explain why you did certain tests and explain how it was helpful in a minor way, but not significantly related to the referral question. The defense attorney will go on and on and say, "Why didn't you explain this in more detail? What are you trying to hide?" So, that's a big challenge.

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

Well, currently there's very little as far as a standard of care or any sort of guidelines. I mean there are minimal guidelines such as do no harm, and those types of ethical issues. But, as far as guiding you through evaluations there's very little. More specific guidelines would be very helpful to more effectively bridge psychology and law. It would be a standard way for the courts to know what is expected when a personal injury evaluation is done and then the expert should comply, or surpass those guidelines. It would minimize the amount of gray area within psychology.

Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the

assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Typically, when I've come into doing competency evaluations, it's after an initial competency evaluation has happened, or after an attorney has felt that they couldn't work with this person. So, for me, it's rare to get someone that's fresh off being arrested and then needs a competency evaluation. There's usually some sort of background in this individual before. But, of course, I want to look at any collateral information, any sort of previous 730 evaluations that were done on this individual, any sort of previous psychiatric evaluations, medical records, any sort of current treatment. Also, are they being treated in the setting they're at (e.g., as far as while incarcerated), are they receiving psychiatric medications?

Then, setting up a meeting with the individual. I have a standard interview that I've used over the years that has helped inform me as far as whether someone's competent to stand trial or not. If I don't have this collateral information, then I'll definitely want to do psychological testing. I think an assessment of their intelligence (e.g., things like abstract reasoning, what is their ability to manipulate information, how concrete are), and regarding feigning to see if they are exaggerating their symptoms. And obviously, a really important piece is the clinical interview. I may, or may not do a personality inventory depending on my general sense of what I want to find out.

In private practice, I'll try and get a more historical understanding of the individual than in my position at the state hospital because it's already done.

2. What would a standard of care for a competency evaluation entail?

I think that it's very similar to what I said for the personal injury evaluations in the sense that it's important for someone to have a good understanding of the case law associated with competency to stand trial and also within each of the states. There are some unique precedent cases within New York State that one should have an understanding of in order to properly do a competency evaluation. And, of course with any sort of assessment you should review collateral records and do any sort of testing that's indicated. But again to have a comprehensive understanding of all of these different instruments that could be applied, or used to help inform the forensic question.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Like I said before, massaging of data. Not using collateral sources. Not fulfilling the referral question of assessing competency.

4. Do you express the ultimate opinion in your reports?

Yes, I do. I know there's some issues with that. I feel comfortable weighing in on my opinion. I've been asked to do that when I've been assessed to do an assessment on

someone. I know that ultimately the judge determines the answer to those questions. But, I've found that often times judges want to know the ultimate opinion. So, I think it's helpful as far as moving along the process.

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

Yes. I think what would be most helpful for any sort of forensic evaluation is to know how certain measures are used in certain settings based on the issues I outlined. For example, is intelligence a factor in this situation? Is culture a factor? And then what do you do? Because you'll see that people don't touch upon a lot of these cross-cultural issues. We're definitely getting better at it as far as the research, but I think there needs to be tons more research on cross-cultural issues and on understanding the culture of the forensic system in general and the unique aspects of these people, and how that can apply to these different evaluations.

6. How would a standard of care be helpful to you in conducting competency evaluations?

Same as I said before – to give the courts a clear picture of what should be expected. Also, the expert has a game plan of what needs to occur within the evaluation.

Closing Questions

1. How do you define an expert?

Someone who has some unique knowledge in an area based on experience and education. In the context of court, a forensic expert is someone that can help inform the court based on their experience and education.

2. Is there anything else you would like to add?

No.

APPENDIX I

Subject 2 Interview Transcript

Pre-Interview Background Questions

1. Age

- 22 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and Over

2. Gender

- Male
- Female

3. Type of degree

- Psy.D.
- Ph.D.
- Ed.D.
- or other (please specify)

4. State in which you are licensed?

New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Court ordered criminal evaluations in both institutional, Bellevue's Court Clinic and private practice settings; Civil forensic evaluations (including vocational disability) in private practice

6. Do you conduct personal injury evaluations, competence evaluations or both?

Both

7. How many personal injury and/or competence evaluations have you completed?

Hard to estimate, well over 100 personal injury evaluations. Probably closer to 1,000 competency evaluations.

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

There are no established practice or care standards, and because each case differs, there is no standard answer. In most cases I utilize some form of psychodiagnostic testing, including malingering tests, MMPI-2, etc – but there are certainly cases where testing is unnecessary or inappropriate. Likewise, I typically seek collateral information, both in the form of objective records as well as informants, but again, there are cases where little information is available that can corroborate the person's self-report. The only true "core" requirements that I can think of are that a) an evaluation should be conducted to the best of one's abilities and b) not to misrepresent or overstate the data.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

Any decisions about psychological testing are made based on the nature of the case and psycholegal questions at hand. Hence, any battery of tests is intentionally flexible. It would be silly to use tests that have virtually no likelihood of yielding meaningful data simply because they are part of a battery, nor to ignore potentially relevant testing simply because it is not the norm. Most testing is based on the need to clarify a) test-taking style/response bias (e.g., malingering or minimization), b) diagnostic questions, c) cognitive functioning, and d) specific psycholegal issues (e.g., psychopathy).

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Objectivity is probably the biggest challenge; there is always a temptation to want to “help” the retaining attorney and it is a constant challenge to remain objective. That’s probably the biggest thing that comes up routinely.

5. How might these challenges be addressed in a standard of care?

I think vigilance is the only solution. I don’t think you can mandate objectivity because bias is not always apparent to the biased clinician. My approach to managing this is to try and conceptualize the case as if I had been retained by the other side. How might I see things or frame things differently?

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Diversity is another constant challenge, though not always apparent to the clinician. Again, vigilance and awareness are the cardinal rules.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes. I typically administer as much testing as is necessary. A self-report inventory (e.g., PAI, MMPI-2, MMPI-2-RF) is standard for me, unless there is some compelling reason NOT to - e.g., illiteracy, language barrier, logistical constraints (e.g., insufficient time). When appropriate (e.g., when some suspicion is raised) I also consider cognitive testing (e.g., TOMM, VIP) and clinician-rated measures (e.g., SIRS). I try to have whatever testing needs MAY be appropriate available to me whenever I conduct an evaluation.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Third party info is very useful, but not necessarily in competency evaluations, particularly if the defendant appears competent (unless, by third party, you mean the attorney). When diagnostic questions arise I may seek family members to provide history

and/or observations of the defendant. In personal injury cases, third party informants can help validate claims of functional impairment and assess malingering (e.g., by providing evidence of higher functioning outside of the litigation context).

Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.
 - What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

Here are my steps, beginning with pre-evaluation preparation:

1. Discuss case with attorney; negotiate fee and arrangements
2. Review available records

Steps During the Evaluation:

3. Informed consent
4. Social/personal history (including medical/psychiatric/educational/vocational – very detailed)
5. Detailed review of incident(s) that led to the injury
6. Mental status exam
7. Psychological testing (definite MMPI or related test; cognitive effort and/or general cognitive functioning tests – like WAIS-IV) as appropriate
8. Follow-up questions

After the Evaluation:

9. Call collateral sources (if applicable)
10. Score, interpret psychological tests (note, this usually precedes #7)
11. Contact attorney to discuss case formulation, determine whether report is needed
12. Prepare report (if requested by attorney)
13. Deposition
14. Testimony (if applicable)

2. What would a standard of care for a personal injury evaluation entail?

I'm not sure I fully understand this question, but I think what you mean is which, if any, of the above steps should occur in any personal injury evaluation. I would argue that each one is critical – or at least potentially critical, and therefore must be considered as part of the standard of care.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

Placing too much weight on the opinion of the referring attorney; trusting the patient's report without considering (i.e., thoroughly evaluating) the possibility of

exaggeration/distortion); insufficient attention to history (crucial to differentiate reactions to the injury from pre-existing problems/conditions).

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

I don't think it would help me, in my work, but there are many clinicians who do shoddy personal injury evaluations (we call them ambulance chasers) – it probably wouldn't help those clinicians either, because the nature of their practice is to do cheap, shoddy work but high volume. It would, however, help attorneys identify shoddy forensic work and, by extension, would bolster the credibility of our profession.

Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Pre-evaluation preparation:

1. Discuss case with attorney (e.g., basis for competency evaluation); negotiate fee and arrangements (including determining whether attorney will/should be present for the evaluation)
2. Review available records

Steps During the Evaluation:

3. Informed consent
4. Relevant background information; much more abbreviated than in personal injury evaluation
5. Mental status exam
6. Psychological testing, if necessary; but only used in a small minority of competency evals
7. Discussion of case; assessment of competency-related abilities

After the Evaluation:

Call collateral sources (if applicable)

Score, interpret psychological tests (note, this usually precedes #7)

Prepare report (if requested by attorney)

Testimony (if applicable)

2. What would a standard of care for a competency evaluation entail?

I don't know that there really is a standard of care for competency, unless it includes a) consideration (but not necessarily formal testing) of malingering; b) discussion with attorney of concerns; and c) consideration of conducting the evaluation with the attorney

present. Everything else seems too highly variable (e.g., testing may or may not be appropriate; collaterals may or may not be relevant).

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Insufficient exploration of competency itself. Many clinicians ask the basic questions (what does a judge do?) but fail to pursue more complex cognitive functioning (is there a rational decision process at work?). Many clinicians also fail to consider the attorney/client relationship and simply presume that the defendant can work with the attorney.

4. Do you express the ultimate opinion in your reports?

Depends on a) the report (evaluation type) and b) my level of certainty. Typically, I will focus on the elements of competency (ability to assist, rational and factual understanding of the proceedings) and then conclude with a statement as to the ultimate issue (which is, in my experience, usually demanded by the judge and/or the statute that underlies the evaluation).

5. How would a standard of care be helpful in clarifying the “ultimate issue” issue?

It would eliminate confusion as to whether ultimate issue testimony is appropriate.

6. How would a standard of care be helpful to you in conducting competency evaluations?

I don't think it would help me, but again, it might help less experienced clinicians.

Closing Questions

1. How do you define an expert?

Someone with specialized knowledge and experience on the specific topic at issue.

2. Is there anything else you would like to add?

Not that I can think of.

APPENDIX J

Participant 3 Interview Transcript

Pre-Interview Background Questions

1. Age

- 22 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and Over

2. Gender

- Male
- Female

3. Type of degree

- Psy.D.
- Ph.D.
- Ed.D.
- or other (please specify)

4. State in which you are licensed?

New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

All

6. Do you conduct personal injury evaluations, competence evaluations or both?

Personal Injury

7. How many personal injury and/or competence evaluations have you completed?

50 personal injury

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

I think some of the standards that I follow routinely are:

- In terms of ethics: explaining confidentiality to the patient
- In forensics, making sure the person knows the guidelines of who the patient is, who the evaluator is, what our role is, and where the information is going (to court)
- Conducting a comprehensive assessment, which includes getting information from a variety of different sources.
- Always meeting with the patient. I never give an opinion, or write a report on someone that I've never met, or at least attempted to meet.
- Using testing appropriately
 - If it's appropriate, use testing that is research based
 - Use more than one measure when testing a construct

- e.g. I wouldn't give one malingering measure, and say the person is malingering
 - Don't over generalize from test results

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

As a routine standard, I'm usually inclined to use testing. For example, if there is a question about the person's intellectual functioning, I would do cognitive testing as well as malingering assessment.

Choosing what tests to give has a lot of professional responsibility ethics involved. I like to give about three tests for each construct I am measuring. My basic battery for measuring different constructs is based on: research, what stands up in court, and my own clinical experience. From there, I use a flexible battery that flows from the referral question.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Confidentiality and informed consent is not necessarily a challenge, but something that I feel is really important. It's important for the client to understand that I'm not their doctor, I'm not treating them, and that I'm using this information to help a judge make a legal opinion about them.

5. How might these challenges be addressed in a standard of care?

It should be a standard to inform clients what the purpose of the evaluation is, where the information is going, and make it clear that we are not treating them but that we're essentially working for the court.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

I've worked with people from what seems like every culture of the world. So, language is a large diversity factor. If someone I am evaluating doesn't speak a language I do, it is their right to have a translator, so I would have to coordinate that. Also, it's imperative for the evaluator to be culturally competent to be able to tease apart symptoms of a mental illness, versus cultural idioms an individual may present with. For example, religious delusions versus common religious beliefs. Sometimes it's hard to tease those apart.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes, always. I would use a basic fixed battery with cognitive measures and measures to assess psychopathology.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Review their medical record. Everyone the person has/currently receives treatment from in the community. Check rap sheet, family, and interpersonal contacts.

Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

From the referral, I start out:

- Gathering as much information as possible. Gathering a psychiatric history, why they're being referred for a personal injury evaluation, prior medical/psychiatric treatment, what symptoms are they presenting with (duration of symptoms historically to current presentation of symptoms)
- Collateral information.
- Psychological testing: cognitive functioning (WAIS-IV), malingering (TOMM, SIRS, MFAST), personality (MMPI-II, PAI)
- Interview
 - My own interview guideline
- Structured written report

2. What would a standard of care for a personal injury evaluation entail?

It would speak to our ethical responsibilities to be competent in conducting these evaluations. In addition to being a licensed psychologist/psychiatrist, it's important to have knowledge of the legal process, and knowledge of laws in the jurisdiction you're doing the evaluation.

Only use psychological tests that are well known in the literature, and related to the question being asked.

In terms of the evaluation itself...it should be a standard to gather multiple sources of information. Also, it should be a standard to meet with the client, or make every reasonable attempt to do so.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

One challenge is that people can be quite mentally ill, but it may have nothing to do with their case and it's often a challenge to tease apart what affects the referral question, and what does not.

The cultural piece is a challenge sometimes. Distinguishing symptoms from cultural beliefs, or attitudes.

A common omission is to fail to consider malingering.

An error would be to say that someone is mentally retarded, or malingering without doing appropriate psychological testing to back this up.

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

As a professional guideline it would be very useful. These evaluations have a lot of weight in someone's life, so it's important to have a standard of care that outlines everything an evaluator should do, outlines what a competent evaluator looks like (degree, education etc). It would help justify for forensic psychologists that we have the specialized knowledge to do something like this.

Closing Questions

2. How do you define an expert?

Someone who knows much more about a certain subject than the average person.

2. Is there anything else you would like to add?

No.

APPENDIX K

Participant 4 Interview Transcript

Pre-Interview Background Questions

1. Age

22 to 34

35 to 44

45 to 54

55 to 64

65 and Over

2. Gender

Male

Female

3. Type of degree

Psy.D.

Ph.D.

Ed.D.

or other (please specify)

4. State in which you are licensed?

New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

All

6. Do you conduct personal injury evaluations, competence evaluations or both?

Personal Injury

7. How many personal injury and/or competence evaluations have you completed?

200 personal injury

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

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Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

I make every attempt to meet the client in-person. I have a standard clinical interview with a set of questions, but I always embellish it based on the referral question presented to me. Also, collateral sources and, psychological testing – as needed.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I have a flexible battery that I work from depending on the referral question. Every case is uniquely different, and I can't imagine a fixed battery approach for personal injury or competency evaluations. Most testing I do for forensics is when the question involves: cognitive abilities, psychopathy, malingering, or diagnostic considerations.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Acknowledging the limits of my data and conclusions. Our job in these evaluations is to assist the judge. I always want the retaining attorney to be satisfied. But, it doesn't always happen and it's important to stand by the ethics of our profession and acknowledge the inherent limitations in any evaluation.

5. How might these challenges be addressed in a standard of care?

A standard of care could outline not only for psychologists, but also for attorneys what the expectations are for these evaluations. Having a delineated guideline for evaluations would help align forensic psychology more to the black and white personality of the law. Our field still has a long way to go in gaining further credibility with the legal system. I think a well-designed standard of care could help with this.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Diversity factors are major. But, you have to have a certain level of advanced awareness to be able to know what to inquire about. A standard of care could be very helpful to lay out minimally acceptable standards for many diversity related themes. For example: What to do when you need to conduct the evaluation via translator? What assessment methodologies are culturally normed for your client?

7. Do you assess for feigning and exaggeration? When, why, and how?

Always. I always administer a self-report inventory like the PAI, the MMPI-2, the MMPI-2-RF. But, sometimes time is not always on my side, and it's important to note in the report why I didn't administer a self-report measure, and what it could have added to the evaluation. Sometimes cognitive testing if someone's intelligence is at question. And always use gender/culture/language/age normed assessments for your client. Otherwise it's useless.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Collateral information is key in both types of evaluations. Often times collateral information has helped me pinpoint other areas I need to test more thoroughly. Medical records, family/friends, treatment providers, RAP sheets.

Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

1. Reason for Referral:
 - Identify the reason for referral. Make sure I understand what the attorney wants me to answer.
 - Make every attempt to meet client in person.
 - Be prepared: interpreter? Educate myself on the case before-hand, review records, contact collaterals after the interview.

2. Clinical Interview:
 - Relevant Prior History:
 - Psychosocial development/relationships/education
 - Employment history, dynamics, performance, and problems (prior to injury)
 - Family history
 - Psychiatric history (evaluation, testing, diagnoses, treatment, hospitalizations)
 - Substance abuse history
 - Criminal history, if relevant
 - Medical history
 - Data Related to the Alleged Injury:
 - Description of the injury in context
 - Jurisdictions differ on what types of injury entitle a plaintiff to compensation. For example, some may consider a foreseeable mental injury to a bystander in the zone of danger, but others may require a direct physical impact. So be sure to capture the details of the injury. If the facts of the injury are in doubt, you may need to provide different opinions that address the different factual scenarios.
 - Subsequent History:
 - Treatment and work-up
 - Concurrent illnesses
 - Subsequent functioning and changes in lifestyle
 - Details of current job/family dynamics, expectations, performance, and accommodations
 - Mental Status Examination
 - Further studies:
 - Consider laboratory and other medical studies, psychological and neuropsychological testing, malingering testing, vocational evaluation, or functional impairment testing
 - Diagnosis
 - Formulation
 - Clinical formulation of illness/injury
 - Explain the diagnoses you have made, including pre-existing illnesses. Summarize the course of illness without getting into the causal connection.
 - Causal connection:

- Discuss etiology, considering potential alternative causes, pre-existing conditions, other stresses, role of personality, and secondary gain. Also, it may be relevant if the plaintiff's own behavior contributed to the injury.
- Did the injury cause a new illness or exacerbate an old one?
- Would the illness have occurred at all in the absence of the injury? What would have been the course of pre-existing illness in the absence of the injury? Would the injury have affected an ordinarily sensitive person, or was the plaintiff uniquely vulnerable?
- Prognosis:
 - The following factors may help the fact finder determine the appropriate level of compensation.
 - Treatment needs and duration?
 - Impact of disability on employment/earnings, family/relationships, lifestyle?
 - Is disability partial or total? Is the injury permanent, or is improvement expected?
- State my opinion:
 - It is my opinion, with a reasonable degree of certainty, that _____ did sustain mental or emotional injuries as a result of _____.
 - Make sure to list limits of confidentiality.
 - Make sure to list dates met with client and amount of time.
 - Was an interpreter need? List name and contact information.
 - Was a psych assistant used for scoring? List name, degree etc.

2. What would a standard of care for a personal injury evaluation entail?

See above response.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

- Failing to communicate the purpose of the evaluation/report/testimony to the client.
- Failing to answer the referral question.
- Failing to consider malingering.
- Failing to consult collateral sources.
- Not using a researched scoring method for an assessment.
- Using assessments that are not normed for the client's demographics.
- Not delineating when you use a psych assistant, or someone other than yourself for administration or scoring of assessments. Always add a qualifier with these details.

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

It would help me by helping our field identify itself with a structured set of guidelines for important evaluations that affect people's life. Without a standard of care, our credibility

will constantly be questioned in the courtroom. A standard of care could be helpful in so many ways. It will identify for beginning psychologists what the expectations are for evaluations, it will keep expert psychologists up-to-date as the standard of care would change with the times (like the forensic guidelines do) and it would level the footing with attorney's structured way of thinking.

Closing Questions

1. How do you define an expert?

Someone who has specialized education, experience, and demonstrated knowledge in the field.

2. Is there anything else you would like to add?

No.

APPENDIX L

Participant 5 Interview Transcript

Pre-Interview Background Questions

1. Age

- 22 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and Over

2. Gender

- Male
- Female

3. Type of degree

- Psy.D.
- Ph.D.
- Ed.D.
- or other (please specify)

4. State in which you are licensed?

Illinois

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Courts at the county level and private practice setting

Do you conduct personal injury evaluations, competence evaluations or both?

Competence evaluations

How many personal injury and/or competence evaluations have you completed?

30

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

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Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes.

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

Standards of the forensic guidelines, APA ethics code, professional standards that may be above and beyond that

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

(See response to Question #1 below) More flexible, it's customized dependent on the referral question. Let's see. Oh, one thing I forgot to. Sometimes neuropsych testing is relevant if there is an issue of a brain issue or something. But, what really guides me is

the suspected reason for the person's possible incompetence. So, if the person has a documented history of mental illness and it's a psychotic disorder or something, I'm typically going to be focusing my assessment around that particular issue. If there is a question when I am interacting with the person and they seem like they might be of limited intellectual functioning, I'll certainly add that, a test of intellectual functioning. But, for someone whose very, you know, their verbal fluency is at a high level and they appear to be functioning at least adequately I may not give an IQ test if that does not appear to be an issue. Yeah, it really just depends on the referral questions and the specific concerns and anything that may come up in the course of my evaluation.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Um, I think one of the biggest things that psychologists tend to deal with is a feeling of pressure from the referral source. Especially private practice psychologists. Often times there's limited information that will be provided for one side or the other. So, if for example a defense attorney is referring someone to you with the hopes that they will be found incompetent, they may provide a certain subset of information to you and then you're working with what you're provided. So, I think one of the biggest responsibilities we have is to make sure we collect our own information as well. Get releases if the person is willing to sign a release, get additional sources of information that will help you get more collateral information that is not submitted by any party that has a particular interest in the outcome of the evaluation.

5. How might these challenges be addressed in a standard of care?

I think the standard of care could require that at least an effort be made to seek collateral information. Because in my opinion, the collateral information is a pretty key important piece and sometimes it's not available, sometimes there are no records, or sometimes the person is not willing to sign a release. And you know you at least made an effort, but you don't have the benefit of having that information, you have to go off of what you're seeing in front of you, but I think at least making an effort and making a requirement that that be documented would be helpful.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Yeah, I think one important way I've seen that come up is bilingual or multicultural defendants. In the clinic that I used to work at we would use interpreters as needed, but I think even doing an evaluation through an interpreter can be very difficult because it's a filter that you don't have when working with someone who speaks the same language as you and it's relying on interpretation of another individual of what that person's saying. And for example, if someone is psychotic and their speech is disorganized and maybe not quite adding up to a full sentence or making that sentence coherent, sometimes the interpreters tend to just fill in the blanks, just mentally, because that's what people try to do. Their brains try to do. And that can really skew the results of the evaluation. I think

also diversity can play a role in. it's important to establish rapport with the person you're evaluating. And I think if you're not appreciating the culture that they're coming from or if they're not feeling understood that can make it challenging as well. How they're addressed I think is practicing culturally sensitive psychology and evaluation practices. Making sure if there is a language issue, doing everything you can to get a full understanding, maybe even talking with the interpreter. Asking any questions you have about the person's structure, word structure or sentence structure.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes, I don't do it every time, but if there is any question about it, yes. Typically the M-FAST or the SIRS. I have also used the Rey to assess for memory malingering, the TOMM. When I would do it is clearly if the person is presenting in a way that would render them incompetent. If the person is answering everything in a coherent fashion and in a way that suggests they understand and it doesn't appear that they're motivated to be found incompetent then there is no reason in my opinion to do it. Yeah, if there is any question about the symptoms that are being reported not being genuine then I would assess for it.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

(See answer to #1 below) Court orders, referral forms, verbal contact with the attorney, medical records, psychological records, hospital records, and I've used collateral sources, like getting a release to speak with family members. Speaking directly with treating psychologists or psychiatrists. Any past evaluations also are helpful. And what role does it play? I think it plays a very important role. The individual you're evaluating may not be able to give you a good history depending on their functioning and they may be motivated in one way or another to present in a certain way as well, so I think it is very important to be able to corroborate the information you're getting or point out any contradictions.

Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Look at the information provided to me, first thing look at the referral information, and court order if there is one, typically after that I consult with the referring source, which would usually be a defense attorney or prosecuting attorney, sometimes another party and clarify the referral question, specifically, what raised their concern in the first place, that the person may not be competent to stand trial, typically there has been some sort of behavior that has been exhibited in either their interactions with the attorney or in the

court, or maybe some other sources of information that raised concern, so I would ask them what led them to have a bona fide doubt about the person's competence to stand trial. I would collect that information, read any background records that I get. Typically the referral would come with some, either police reports, hospital records, any mental health records, so I review as many records as I get on the front end. Um, then schedule the appointment with the person to evaluate them. That could be in a correctional setting. In my previous work, it could be in a private office as well. So upon meeting the person, I obtain informed consent. Make sure it's clear on the outset how the report is going to be used, how the information we discuss is going to be used. Conduct the evaluation from there. The methods I use in the evaluation depend really on the referral question and the concerns. So, for example, if there are concerns the person may not understand the court proceedings because of mental retardation, I would definitely conduct a WAIS or a WISC dependent on the person's age and usually a structured competency to stand trial interview. I do that for everybody and that includes questions about court proceedings, the significant players in the court room, judge, prosecuting attorney, defense attorney, the procedures themselves. So, I would make sure the person understands the adversarial nature of the court system. And the fact that because of the charges against them there are some people there that are trying to get a conviction and trying to get them punished for their actions. And there are other people who help them and that they can distinguish who is who. Assess their understanding of the need for behavioral control in the courtroom. Assess their willingness and ability to cooperate in their own defense with their attorney. So, the structured interview covers most of these areas, all these areas, plus a few more. Let's see. I've used an instrument called the competency screening test, just as a guideline to get more information. It's an incomplete sentence measure and it includes sentences such as, "Jack feels that the judge blank." and then the person fills in the rest. Just to get at their attitudes and their understanding. Um, what else. If the question is their mental illness and if the mental illness could potentially interfere with their competence then I would assess for that in whatever way I am able to. Typically it would be the PAI, I used could be at times I use a substance abuse screening measure, like the SASI, depending on whether or not that's an issue. Just to tease out what all the issues are that are contributing to the person's ability or inability to go forward as a defendant. Um, and I pick and choose these depending on the nature of the referring question. If the person is incarcerated I collect any records from the facility that they're at. In this type of setting I would collect as much information from correctional staff and or medical providers as I could. Get releases from the person when I see them to get, you know any additional records. Speak to other people in the person's life. A lot of times speaking to family members can be helpful to discover the course and nature of the symptoms of the illness. I think that is pretty much it in terms of assessment. And then, you know, I compile all the information and make sure I am operating under the statute of the jurisdiction I am under. So, in Illinois I would use the Illinois statutes and their definition of competency to stand trial and formulate an opinion based on all the information I collected. Write a report and submit it to the court.

2. What would a standard of care for a competency evaluation entail?

What would it entail? It's difficult because testing has to be kind of customized, at least in my opinion. There shouldn't necessarily be a standard set of tests or type of tests even. But, maybe the standard of care, like I said before, I think it should include an attempt to gain collateral information, I think it should include contact with the referral source, like the referring attorney. I think a lot of people are afraid to make those type of contacts. I think the court is intimidating to certain psychologists; maybe they're not so familiar with it. But, really communicating at the front end can be really helpful in understanding what's going on and what the concerns are. You know, I think the general areas of testing should be included, in that, if appropriate. I think it would have to be open ended. You know, if appropriate IQ testing should be done. If appropriate, personality testing or substance-related testing or malingering, but I don't think those need to be absolutes because I think it would create a lot of extra unneeded testing that would not be worthwhile.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Not getting collateral information. I've seen some evaluations where psychologists are not appearing to assess for the issue at hand if that makes sense. The person may be giving a Rorschach or a TAT or some other projective personality measure when the issue is the person's understanding of the court system and you know some of the testing doesn't seem to really match the information that would be helpful in answering that question. I have even seen somewhere there is no real conclusion reached. And there are times, I think, to be fair when you can't reach a conclusion because you simply don't have enough information or the person isn't cooperating with the evaluation I've seen some where the person refuses to speak at all and it's really difficult to evaluate if you have no additional information of what's going on with the person. But, I think just procedurally that the psychologists understand what they're evaluating and that they use the appropriate procedures. And not weigh too heavily on one or the other.

4. Do you express the ultimate opinion in your reports?

Yes

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

I do think it is helpful for psychologists, in fact I've been asked, our agency has been asked, specifically by judges to do that, to comment on other legal forensic issues as well. But I think especially when, so for example if you have, some cases are really clear-cut one way or the other. The person is clearly incompetent and in some the person is clearly competent. But in some cases they are sort of borderline and to leave it up to the court to interpret all your test data and to figure out where the person lies on that continuum is irresponsible in my opinion. I think it's really you're responsibility as a psychologist to follow up with all the testing and all the information gathering you've done to tie it all together and offer the opinion. I mean the court can go against it if they disagree, if they have additional information or if they have another expert that says something different.

It's up to them to weigh that at that point. I don't think it's responsible to leave it up to the Court to interpret your test data and your interview data for you.

6. How would a standard of care be helpful to you in conducting competency evaluations?

I would be happy doing them the way I do them. I would like to think that I am doing them in a responsible and thorough way, but if there was anything else that came up that was determined to be helpful, of course I would be open to looking at that standard of care and following it. So I think it would be helpful just to have it outlined. I think I would probably be doing everything that needs to be done anyway, is my thought, but if not I would certainly follow it.

Closing Questions

1. How do you define an expert?

Someone who has training and experience in forensic evaluation, I mean in this context, I assume you're asking, someone who has had supervised training in competency evaluations and has experience conducting them. You know, has a Ph.D. or Psy.D. in psychology, clinical psychology, and a license and maintains their license without issue. Yeah, I think that's pretty much it.

2. Is there anything else you would like to add?

I don't think so. Very thorough.

APPENDIX M

Participant 6 Interview Transcript

Pre-Interview Background Questions

1. Age

- 22 to 34
- 35 to 44
- 45 to 54
- 55 to 64
- 65 and Over

2. Gender

- Male
- Female

3. Type of degree

- Psy.D.
- Ph.D.
- Ed.D.
- or other (please specify)

4. State in which you are licensed?

Massachusetts

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Criminal, court-ordered

Do you conduct personal injury evaluations, competence evaluations or both?

Competence evaluations

How many personal injury and/or competence evaluations have you completed?

A few hundred competency-screening evaluations. They weren't the 15 to 20 page reports we write here. Of the full reports I would say 100s.

Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

Semi-Structured Questions

General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes, definitely. I do.

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

I use the guidelines and standards that were taught to me during my training in forensic assessment and through my mentorship. I don't think there are set standards for competency evaluations.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I always give an MMPI to everyone. That might change because I rarely get one back that is valid. I use a flexible battery. I will give a cognitive screening measure if there appears to be any cognitive issues during the evaluation. If the referral question or history

suggests any possible cognitive issues or a brain injury I will give cognitive measures, such as a full WAIS and give additional testing as needed. I don't do cognitive tests unless there is a history or issue. If there is prior testing that has been completed recently, I may not do testing.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

I think the major ethical challenges when completing forensic evaluations are people who are working on their own or working independently that have been hired by one side and are obviously skewed. Some of the reports are pretty skewed and if they are providing an expert opinion and focusing on a subset of information that can damage our credibility as a field. If there are two experts with very different reports looking at different things, that doesn't look good.

5. How might these challenges be addressed in a standard of care?

If there was a governing body or something you would be bound to, there would be that external pressure.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Language factors and ethnicity and cultural factors. I think a lot is lost in translation. A lot of what we are dealing with is very nuanced. I don't believe my opinions are as solid when I have to use a translator. Also, some Hispanic cultures and cultures from the Caribbean have ideas and beliefs that are very religious or voodoo or Santeria. Those beliefs can sometimes appear psychotic in mental health defendants. It can be hard to tease out the quality of those beliefs. Sometimes when they have a mental illness and fixate on their religious or cultural beliefs it can be difficult to tease out what is psychotic.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes. From the minute I meet them. I assess from the very beginning. In all my interviews and interactions I am assessing for how genuine they are. There is obviously a lot of secondary gain in these cases and you need to assess for malingering and exaggeration. I would do something more formal if it is called for if they may be assessing mental health psychotic symptoms or a cognitive impairment. I use collateral information and I can monitor calls in this setting.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

I talk to the attorney and the prosecutor. I don't want to talk to just one side and like to speak to both on the phone. All the records. I am usually overinclusive of records in my report. I talk to their family, especially if there is a responsibility issue and try to talk to

someone who was around near the time of the event. I find out where they have been hospitalized or incarcerated and request all of their records.

Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

I review all the information I have on hand. All the records and I call the attorney and the prosecutor. The records help identify additional collateral sources. I do the interviews. The background history interview can take one to two sessions. I get all of their background from birth until now. I think about what testing needs to be done and refer for testing or do the testing. I might do collateral calls to fill in gaps. I do a series of interviews for competency. I don't use a standardized test for competency. I use a structured interview I developed from bits and pieces from various places through my training and work. I am overinclusive with my questions. It allows me to gather more qualitative data that I may have missed through a structured test. If they are very focused on one thing or have trouble getting along with the lawyer. Instead of completing a structured test and then asking all these questions at the end, I ask them all throughout. It included all the questions that would be on a structured test, plus more questions. I ask them about the thoughts on treatment and medications and their mental illness. I write a conservative section about treatment. And then there is a lot of writing. I write the report.

2. What would a standard of care for a competency evaluation entail?

Report structuring. How to structure a report and what to include and what not to include because of legal issues. What data to include. Maybe templates or a tutorial. What should be left out of evaluations. Help the evaluators understand the specifics. Important to be clear about the ethics part. I think the ethics issues we talked about can really undermine the credibility of the professions.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Giving opinions not backed by data. Sometimes you read a whole report and then don't know how they reached the opinion at the end. I think that is the most egregious mistake. Or veering off the subject. Sometimes people will muddle the waters and answer either competency, responsibility or dangerousness in different reports. They'll talk about responsibility or even just a routine psych eval in a competency report instead of focusing on the subject.

4. Do you express the ultimate opinion in your reports?

I would never say I find this person competent. That is the judge's job and everyone involved in the courts knows that. I will give my opinion and they can choose to accept it or not. I might refer to competency-related skills or issues that negatively impact their competency and I give my opinion, but it is not my job to reach the finding.

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

I don't really see what the controversy is about. You don't find the defendant competent or not. You offer an opinion and the Court decides on it. I go further with my opinion in sanity evaluations.

6. How would a standard of care be helpful to you in conducting competency evaluations?

Yes, certainly. I think a standard of care would be helpful in providing additional standardization and guidelines for all forensic psychologists to follow. It would help you feel more confident in the product.

Closing Questions

1. How do you define an expert?

I wouldn't consider myself an expert in say trauma, for instance. I could say I am an expert in psychology, but not other subspecialties, except for forensic psychology. I think formalized training or mentorship would help determine if you are an expert because it is a specialized skill set. I wouldn't be competent in forensic psychology if I had not received the training or experience I did. In Massachusetts you have to be designated a forensic psychologist and have shown certain skills and there is a panel that reviews the quality of reports. There is a lot of variation throughout and no standardization. I don't think you can just dabble in forensic psychology or fall into it. It is a special skill set.

2. Is there anything else you would like to add?

No.