

# Guidelines for Psychiatric “Fitness for Duty” Evaluations of Physicians RESOURCE DOCUMENT

Approved by the Joint Reference Committee, June 2004

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*This document was prepared by the APA Council on Psychiatry and Law and Corresponding Committee on Physician Health, Illness, and Impairment.*

## **Background**

Psychiatrists are often called upon to evaluate a physician's fitness for duty. Specific questions may center on the presence of psychiatric or neuropsychiatric impairment. In these cases, the psychiatrist may be asked to examine the physician, prepare a report of detailed diagnostic findings and treatment options, and offer an opinion regarding fitness for duty.

Impairment is a related or corollary concept to “fitness for duty.” This document defines impairment as the inability to practice medicine with reasonable skill and safety as a result of illness or injury. Illness may refer to psychiatric disorders, including substance use disorders, as well as physical disease or disability. Under certain circumstances a physician's problematic behavior will lead to questions about fitness for duty. Boundary violations (such as sexual misconduct), unethical/illegal behavior, or maladaptive personality traits may precipitate an evaluation, but do not necessarily result from disability or impairment due to a psychiatric illness.

A physician may have difficulty practicing safely based on a lack of adequate knowledge, training, or skill. Detailed evaluation of such problems is not within the scope of a psychiatric fitness for duty examination. If such knowledge or skill deficits are suspected, referral should be made to an appropriate assessment or peer review program. Further education, training, or remediation may be necessary.

A fitness for duty evaluation must address the specific functional tasks of the particular physician's duties. For example, a Parkinsonian tremor might impair the work performance of a neurosurgeon, but may not significantly impair a psychiatrist.

## **Guidelines**

The examination and report should meet the standards of a high quality psychiatric evaluation, with special attention to obtaining a thorough history, gathering of collateral information, job performance data, and appropriate psychometric and laboratory testing, as necessary.

Specifically, a fitness for duty examination should include a careful history of the presenting complaint. It is essential that the evaluating psychiatrist make considerable effort to obtain and review all relevant documents and records. Some documents may be provided by the referral source; the evaluatee may need to sign an appropriate release of information to obtain other pertinent records. Collateral information should be obtained from a spouse or significant other, the referral source, direct reports and supervisors in the physician workplace, as well as anyone treating, evaluating, or monitoring the physician. A criteria-based job description or list of responsibilities, along with an organizational hierarchical schema can also be useful.

A complete psychiatric evaluation and mental status examination should be performed, with emphasis on work history and any performance

problems. Performance problems may be readily described by the physician being examined, but can also be elaborated by asking about peer review problems, hospital actions resulting in privilege changes, professional liability experience, complaints to or actions by state licensing or specialty boards, or concerns voiced by others in the practice environment.

Any relevant area of the history should be reviewed in special detail, e.g. history of any past psychiatric illness or treatment, medical history, or sexual history in someone being evaluated for sexual misconduct (such as a professional boundary violation or child sexual abuse). The mental status examination should be expanded in cases where the referral problem identified possible cognitive deficits or when the evaluator finds evidence of cognitive impairment. If indicated, the evaluating psychiatrist should refer the evaluatee for psychological, neuropsychological, medical, laboratory, or other examinations or tests. Urine screening and other laboratory tests for substance abuse are often necessary.

It is most helpful prior to the evaluation to clarify in writing the referring source's specific questions. Reporting the evaluator's findings and opinions will vary according to the intended audience. Commonly this is the state licensing board. Because the board has the ultimate authority regarding a physician's ability to practice safely and is charged with the protection of the public, the board will typically require a comprehensive report. The report should be especially thorough in the areas that are in question. Sensitive personal information may be spared or summarized in the report if it is not directly related to the fitness questions, but the evaluator and evaluatee should both be aware that this may raise concerns that the report has been “sterilized” or “whitewashed.” This may be a greater risk if the evaluator concluded that the examined physician has no impairment relevant to his fitness to practice medicine.

The evaluator should offer an opinion about whether the physician suffers from a psychiatric illness; whether that illness, if present, interferes with the physician's ability to practice safely in his particular job; and the specific reasons and areas of impairment, including insight and judgment. If medical practice can safely take place under specific conditions---such as prescribed workplace conditions, consideration of specific risk factors, conditions of treatment and/or treatment monitoring---these should be outlined in detail. As noted above, the evaluator should limit her expert opinion to issues of psychiatric impairment. These examinations are not assessments of unsafe medical practice due to lack of skill, knowledge, or training.

The evaluator may be asked to outline recommended treatment for the condition. If current treatment is not adequate for the condition, that should be clearly articulated. The evaluator may conclude that the physician does not have a significant psychiatric disorder, but is so emotionally distressed, e.g., by a recent event, that he is currently unsafe to practice. Such a finding should also be reported, along with potential treatment recommendations or interventions. Within the report, it should be easy to follow the logical clinical connections between the illness, its impairing symptoms, and how the symptoms may impact the physician's ability to practice. If no impairment is found, the data should also be articulated with a clear logical explanation substantiating the conclusions. The report should not just briefly conclude that there is no problem and therefore the physician is fit for duty.

Licensing board complaints, investigations, findings, and actions may be publicly disclosed, depending on the situation or jurisdiction. While some modification of the report might be appropriate in states where there is extensive public access, it must be recognized that being granted a license to practice medicine is a privilege, not an inherent right. The laws that govern the ability of a licensing board to order an evaluation are known (or should be known) to the physician at the time of licensure and renewal (since these are delineated in the medical practices act of each state and are typically included with the licensing packet).

For referral sources other than the state licensing board, there are a number of factors that could impact decisions about what information to include in the examiner's report. In general, the smaller or more local the referral source, the more likely that medical and other personal information

will be viewed by individuals who personally know or may have conflicts of interest with the physician being evaluated. Practice groups, hospitals, and HMOs may have varying degrees to which they can maintain confidentiality. In these cases, it may be appropriate to limit the detail of the report to the specific referral questions, with less emphasis on sensitive personal information. For example, an examiner might state that she collected detailed information about personal, medical, and social history that substantiated her opinions, and can provide a more detailed report of that data upon further request. This approach may require further discussion with the referral source, ideally prior to conducting the evaluation. In all cases, it is important that the specific positive or negative findings about fitness for duty be well explained and substantiated.

### **Practical Considerations**

The examiner should first explain the limits of confidentiality to the physician being examined. This would include an explanation of the purpose and process of the evaluation, who will be receiving the report, and that there is no establishment of a doctor-patient treatment relationship. In order to make collateral contacts, it is usually good practice to obtain signed releases of information from the physician being examined. If he refuses to allow necessary collateral contacts, that refusal should be documented in the report, along with a comment that the conclusions may be limited by the lack of that potentially useful collateral information. Depending on the referral circumstances, releases for certain collateral contacts may be mandated or unnecessary; this is best clarified at the outset of the examination.

Although the examination does not establish a treatment relationship, the evaluator may have access to confidential health information, and should be aware of any responsibility under federal or state privacy laws regarding the appropriate secure storage or disposal of such information and records.

Prior to agreeing to perform the evaluation, the examining psychiatrist and referring source should both be comfortable that the examiner has sufficient expertise to conduct a competent evaluation. Often the examiner will provide her CV as well as relevant prior experience conducting similar examinations. Forensic training, experience, or certification may be helpful, but not required. In certain circumstances, such as the presence or history of significant substance abuse or sexual misconduct, the evaluator may need specific expertise in those areas of evaluation and treatment. The evaluating psychiatrist should not have any current or past treatment or employment relationship with the physician being examined. Questions of potential bias or conflict of interest should be clearly addressed prior to the evaluator performing the examination. If specific additional examination is necessary (such as neuropsychological testing) that cannot be performed by the primary evaluator, appropriate further specialty consultation should be arranged with consent from the evaluatee and the referring source.

Payment for the evaluation should be clearly discussed and arranged prior to the evaluation. Often the physician being examined will indirectly pay the cost (typically through an attorney or other third party), but this may vary depending on the referral source. These evaluations are not customarily reimbursed by third party health insurance. The examining psychiatrist should provide a reasonable estimate of the total cost of the evaluation and report preparation. Full or partial payment prior to completion of the report may be requested to avoid any concerns about compensation---particularly if the physician being examined is responsible for payment and may be dissatisfied with the examiner's final conclusions.

Psychiatrists who contemplate conducting these evaluations may be concerned about their own liability risk. An unfavorable outcome or medical error resulting in patient harm by a physician who has been recently found "fit for duty" could result in allegations of malpractice or negligence against the examining psychiatrist. Although the examining

psychiatrist should clearly establish there is no treatment relationship with the physician being evaluated (which may preclude a successful medical malpractice claim), allegations of negligent evaluation can still be made, even if ultimately defended successfully. The evaluating psychiatrist should make sure that her own liability insurance would cover defense of such potential allegations. It is essential to present a thoroughly documented report, including any limitations on the certainty of the opinion due to incomplete, inaccurate or missing data. In evaluations done for the state medical board, that board retains ultimate authority---and responsibility---for the licensure status of the physician being examined.