

Evaluations of a Forensic Psychiatrist

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Preface

As a high school student interested in Forensic Psychiatry, I could not find any books to read on the subject in the library during my earlier years. If I did find anything, it would be on the internet, and would oftentimes be far too complex and riddled with jargon for me to understand. My understanding of the career was quite limited until I joined the Frisco ISD Independent Study and Mentorship Program, otherwise known as ISM. In the program, I was able to learn about Forensic Psychiatry in depth through personal research and my mentor, Dr. Mitchell H. Dunn, a board-certified Forensic Psychiatrist. I not only learned about the career in a private practice setting, but in a hospital setting as well. I learned about various psychiatric drugs and their usage, the diagnostic objectives of mental illnesses, a plethora of psychiatric tests, and about the evaluations a forensic psychiatrist performs.

The Independent Study and Mentorship Program is a self-motivated class with only a few guidelines. To what extent we excelled solely depended on the amount of effort we put in. We were provided with a map, a burner phone and a vehicle instruction manual and then told to find our own car and learn to drive it to where we wanted to go. Every now and then, our ever-so wise teacher, Mr. Brian Wysong, would call us and give us tips on how to drive and which turns to not take. However as independent as the program is, ISM required six things from us: attend a business symposium, prepare ourselves for research showcase, find a mentor, create an original work, create a product, and present our entire experience at Final Presentation Night.

When I heard about the product we were expected to create, my brain started to fire out ideas. At the time, I didn't know what I wanted to create but I knew I wanted it to be tangible. I didn't want to create anything that depended on the internet or technology. I wanted a solid product that I could easily present without the fear of it being messed up. With that in mind, I decided to write a book about Forensic Psychiatry in an easily understandable way. My goal was to create a book, that would be beneficial to those starting off in their learning, similar to how I was in the beginning of junior year. Noticeably, there are many general and beginner books on the subject of various careers, such as pediatrics and dentistry.

As I mentioned earlier, there aren't many resources for a casual reader interested in the field. This book is meant to help remedy that void by being a stepping stone in order to allow individuals with an interest to steadily progress until they can move from my book to more complex articles, research documents, and informational texts. To clarify, this book is not about the basics of Forensic Psychiatry. It is not about the education needed to become a Forensic Psychiatrist, or about the amount of money they make every year. That information is easily found on the internet. This book delves more into the work of a Forensic Psychiatrist, more specifically: the types of evaluations. Although not all types of evaluations are touched upon, the most significant or common ones are written about in detail. Additionally, Forensic Psychiatrists do in fact do other work not related to evaluations. I chose to focus on evaluations in order to provide an in depth snapshot to those interested in Forensic Psychiatry, a field not commonly written about.

Chapter 1: Evaluation of Competency to Stand Trial

An Evaluation of Competency to Stand Trial is an evaluation in which a forensic psychiatrist evaluates an individual to determine whether or not the individual is competent enough to stand trial. In general, to be considered competent, an individual must be able to perform a certain task successfully. In this case, an individual is being evaluated in order to determine if he has the capacity to consult with his attorney on his own defense and if the defendant has an accurate understanding of the charges being held against him. For the sake of conciseness, all individuals will be referred to as he from this point on. This standard was first established in the well-known Supreme Court case, *Dusky v. United States*, in which the court ruled and outlined that a defendant has the right to have a competency evaluation and established the standards for determining competency in a court of law. The court determined that it is not enough that "the defendant [is] oriented to time and place and [has] some recollection of events," but that the "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him." This decision indicates that a defendant may not be subject to a trial if he has a mental condition in which he lacks the ability to understand the charges being held against him and lacks the capacity to consult with his attorney. It is important to note that a competency to stand trial assessment is not the same as a competency evaluation. Evaluations of competency can vary depending on what the individual needs to be able to do. Competency is situation specific and evaluates an individual's capacity to perform a task. Depending on 'what' it is an individual needs to be able to do, the threshold of competency may be higher or lower. For example, while an individual may be competent enough to make the decision to allow someone to draw a portion of his blood, they may not be competent to decide whether or not to let someone perform a highly experimental procedure on them. Obviously, the decision to allow a stranger to perform a experimental procedure on them is a much more serious and important decision.

This discussion leads into why Evaluations of Competency are a necessity. These assessments are needed in order to determine if an individual can adequately stand trial and have knowledge of his situation. If a person is not competent and proceeds to trial, he would not have the capacity to defend himself adequately and would possibly endure an unfair trial. Additionally, his attorney would be unable to sufficiently perform his role due to his inability to communicate adequately with the defendant. This could adversely affect his sentencing. Overall, the right to be evaluated for competency to stand trial protects the rights of defendants.

Often times, a judge requests that a competency evaluation be performed on defendant. When there is suspicion or a reasonable basis to suspect that a defendant may or may not be competent, it is common for a forensic psychiatrist be requested to perform an evaluation. In some cases, an attorney will contact a forensic psychiatrist in order to have him evaluate the defendant. In other instances, a judge may retain the psychiatrist instead. A court appointed forensic psychiatrist allows an evaluation to be presented without concern that he may have been biased by the attorney that requested the evaluation. Otherwise, competing evaluations would be presented. In high-profile cases, it is common for the defense and/or the prosecution to hire their own forensic psychiatry experts apart from the court-appointed expert. In many instances, a

forensic psychiatrist may be initially asked to evaluate a defendant by one side, but have a opinion that is favorable to the opposing side. and end up testifying on the behalf of the opposing party. This may occur because an expert's opinion should not be formed based on the hopes of the party that contacted him. Contrarily, an expert witness's opinion is wholly his own and is not influenced by outside biases and beliefs.

For a forensic psychiatrist the process of a Competency to Stand trial assessment begins when a judge or an attorney requests him to perform an evaluation on the defendant. Usually, forensic evaluators avoid performing a competency evaluation immediately after an individual is taken into custody in order to prevent an incorrect assessment from being formed. Conducting an evaluation too soon can yield false results because of the possibility that the individual's mental status may be impaired by the effects of substance abuse. A plethora of drugs affect individuals in a way that may seem like effects of a mental illness. For example, hallucinogens, such as LSD, cause visual and auditory hallucinations as well as intense emotional mood swings. All of these are common symptoms of mental illnesses such as schizophrenia. In another example, cannabis regularly causes severe intellectual impairment, altered sensory perceptions, and slow and confused thinking. These effects could all imply disorganized thinking and incompetency among other illnesses. As a result, assessing a defendant while they are under the influence of a substance is problematic and may affect evaluation results.

Once it has been determined that the individual is not being affected by any substances, a forensic psychiatrist can proceed and arrange a meeting with the individual for the competency evaluation. Depending on the circumstances for the defendant's appearance in court, the location may vary. For example, if a defendant is being charged with a misdemeanor, the defendant and forensic psychiatrist can meet in a less restrictive location, such as an office building. However, if the individual is being charged with a felony, it would be more likely that the forensic psychiatrist would travel to the jail or prison the individual was being held at. In short, the location and environment for the evaluation depends on the level of risk the defendant poses to themselves, the forensic psychiatrist, and the public.

After a time and location is determined and agreed upon, a forensic psychiatrist must prepare for the evaluation. When requested to conduct a competency to stand trial assessment, the court provides the forensic psychiatrist with documents regarding the defendant. The following documents are commonly given to forensic psychiatrists: medical records, transcript of interviews performed at detention centers, police reports and statements, the criminal record, and transcripts of telephone discussions. These documents aid a forensic psychiatrist to gain an understanding of the person and his actions, which allows the him to be able to ask appropriate and focused questions. This, in turn, allows the evaluating expert to discern information, thoughts, and behaviors that would not have been noticed. Such aspects is important to conduct an accurate competency to stand trial evaluation, which can ultimately influence court proceedings.

After all the necessary preparation is completed, the forensic psychiatrist will meet the defendant for an assessment. During the interview, the forensic psychiatrist not only asks questions about with the defendant to conduct a face-to-face interview for the competency to stand trial the individual to determine his orientation, mood, cognition, concentration, insight and judgment, but they also observe the defendant's behavior. This is a crucial aspect because behavior can indicate a significant amount of information. For example, if an individual is constantly biting their nails, it can be inferred that he is quite nervous while finger tapping can indicate impatience. Thus it is important for the interview to occur in person. For example, the defendant's behavior can be undetectable if the interview is conducted over the phone. Other aspects to consider are tone of voice, eye contact, and facial expressions.

An important thing to note is that the evaluator is observant through the entire interview process and extracts information as the defendant is often engaged in idle discussion. He also records statements made about past psychiatric, medical, substance abuse and social history. This information is important because it helps forensic psychiatrists gain perspective on what may have caused an individual to develop the way they did and think and behave in a certain way.

The next category is mental status, which is where all other pertinent information is placed. Information such as appearance, grooming, manner of speaking, organization of thoughts, concentration levels, symptoms of any mental disorder, and cognition are all included in this section. For the mental status portion, a forensic psychiatrist, in many instances, will record significant quotes by the defendant to include in his report later on.

The last type of information a forensic psychiatrist discerns is information pertaining to the defendant's competency. For this section, he looks for information regarding the defendant's capacity to rationally understand the charges against him, the capacity to disclose applicable facts, events and states of mind to their attorneys, the capacity to engage in a reasoned choice of legal strategies and options, the capacity to understand the adversarial nature of the criminal proceedings, the capacity to exhibit appropriate courtroom behavior, and the capacity to testify. Additionally, he delves into any impact caused by mental illness on the individual's ability to interact with counsel reasonably and logically.

The process of conducting an evaluation of competency to stand trial usually concludes with a well written report by the forensic psychiatrist. With the detailed notes, from the face-to-face interview and from the examination of various documents and sources, he will compile his findings into a report for the court. A well-written report includes basic information, such as the purpose of the evaluation, a statement of non-confidentiality- the report could be utilized in court- a list of sources of information, and a description of the examination's procedures. Then, the previously mentioned histories (social history, substance abuse history, etc.) are detailed into separate paragraphs. It also includes mental status examination, diagnosis, and findings pertaining to the defendant's competency. The final reported section is the forensic psychiatrist's opinion on the defendant. Since a forensic psychiatrist is considered an expert witness, their opinion is valuable to the court. By reserving a brief section for the forensic psychiatrist's opinion, the evaluation is easily understood. In a way, the opinion is the summary and conclusion because all details of the case are analyzed and then interpreted in this section. Here, the forensic evaluator clearly states whether or not an individual is competent to stand trial, which is useful for attorneys and the judge.

Although competency assessments are conducted with the court in mind, very rarely do forensic psychiatrists end up presenting their evaluation in trial. In fact, most competency to stand trial cases are resolved by taking the expert's remarks into consideration, with both sides reaching an agreement regarding the defendant's competency. Oftentimes, the evaluation is taken into consideration by both parties and is used to make decisions later on. If an individual is deemed incompetent to stand trial, the charges against the defendant may be dropped or may be put on hold until the individual gains competency or is restored to competency.

In special circumstances, a forensic psychiatrist may be called to testify in court and to present their evaluation on the defendant's capacity to stand trial. If this occurs, the forensic psychiatrist will review his evaluation and appear before the court to present his opinion as an unbiased expert witness. In court, an evaluator's duty is to explain his opinion in a way that the judge and jury can understand in order for a decision to be made appropriately. The evaluation is just another tool to aid the court in understanding the defendant and in making the most reasonable judgement.

Chapter 2: Evaluation of Disability

An evaluation of disability is an evaluation in which a forensic psychiatrist examines an individual to determine if an individual's disabilities affect his ability to make a living. While disability evaluations are quite similar to competency evaluations, disability is completely different from impairment. Officially, a disability can be defined as a condition, disorder, or disease that limits individuals in activities, movements, participation, and senses. Impairment, on the other hand, is considered as a state of being diminished or as a loss the ability to use any body function. These assessments are more difficult because it is challenging to assess an individual's capacity to complete their work. In many instances, the evaluation depends on the type of job and/or occupational skills needed. Furthermore, these evaluations can become more arduous when questions in regards to whether or not the individual can do any job in the workforce, or whether or not he can do his job arise.

The disability assessment is the most common psychiatric evaluation requested for nontherapeutic reasons. This evaluation is needed because, in some instances, mental illnesses can induce an inability to work and cause an individual to need financial assistance. As a result, when a disability claim is filed, a forensic psychiatrist is asked to assess the individual claiming disability in order to determine whether or not he is eligible for financial assistance. If an individual is able to claim any mental disability, the financial assistance he would receive would be beneficial and ease many economic difficulties in life. In some cases, a mental disability, such as Post Traumatic Stress Disorder (PTSD), may have been caused by the job itself. The individual would then be able to file a claim for worker's compensation and private insurance. Overall, the purpose of the evaluation is to provide information so that the organization or insurance carrier can determine the best course of action such as awarding damages, authorizing specific health care benefits, or making workplace accommodations available.

When an individual files a claim of disability with their insurance carrier, the carrier investigates the claim. During investigation, insurance carriers will review medical documents and may hire experts, such as forensic psychiatrists, in order to obtain an independent opinion. In other instances, either party in a litigation or an employer may request such an evaluation. These evaluations are otherwise known as Independent Medical Evaluations (IME) or Independent Psychiatric Examinations, and may be requested by the previously mentioned parties.

To begin, it is important to understand that direct evaluations are not necessarily needed for an expert to form an opinion. Opinions can be developed based on the review of the documents and records. On the other hand, when an opinion is formed based on records alone, the forensic psychiatrist must make a note in his report that he did not conduct a personal examination. In most circumstances, however, when a plaintiff claims that he is disabled due to a psychiatric illness or injury and seeks compensation for damages, a psychiatric assessment must be conducted in order for the claim to meet the requirements for compensation. In order for a forensic psychiatrist to form an opinion on the disability of the plaintiff, the plaintiff must display a specific number of symptoms to meet the criterion for diagnosis. These symptoms are required to cause a significant amount of impairment and/or distress in various areas such as socially, economically, and vocationally. To test for these symptoms, many forensic psychiatrists use the Global Assessment of Functioning (GAF), which is used to objectively evaluate an individual's social, psychological, and occupational functioning on a numeric scale from one to one hundred. A score range of ninety-one to one hundred signifies optimal mental health and capabilities. Those recorded with a score in between the age

range of seventy one to ninety have mild psychological issues. Severe problems in functioning are found in the twenty one to thirty range, while the one to ten range signifies a severe incapability of maintaining minimal personal hygiene. Recently, a new method, called the World Health Organization Disability Assessment Schedule (WHODAS), has been encouraged. According to the WHO, the WHODAS is a generic assessment instrumental for health and disability that takes five to twenty minutes to administer. The assessment covers the topics of cognition, mobility, self-care, life activities, interactions, and participation. While conducting a disability evaluation, it is important for a forensic evaluator to be able to determine whether an individual's symptoms are serious enough to cause limitations and/or restrictions on his ability to execute vocational functions and duties. It is imperative to understand that possessing a psychiatric illness does not necessarily suggest debilitating functional impairment. In fact, many individuals can continue on and function relatively normally even with a illness such as obsessive compulsive disorder (OCD).

When conducting an evaluation of disability, there are a few basic guidelines a forensic psychiatrist follows to provide an exceptional assessment. The American Academy of Psychiatry and the Law (AAPL) recommends forensic psychiatrist to clarify to the referral source the type of assessment and the role they are expected to play in the evaluation. To elaborate, a forensic psychiatrist simply needs to outline the objectives and questions of the evaluation in order to ascertain that the referral source, such as an insurance carrier, understands the evaluating psychiatrist's function and role. By doing this the forensic psychiatrist can learn what is needed and expected of him, and the referral source can learn what the forensic psychiatrist can provide. One crucial component of the process is analyzing the collateral information and records before the direct evaluation occurs. The evaluator can consult formal written professional and business records, personal interviews, depositions and witness statements. The referral source usually provides the collateral information. If the psychiatrist identifies supplementary information that may be obtainable, the referral source is asked to provide it. The psychiatrist personally reviews collateral information and does not rely on the summaries provided by the referral source, as it may overlook important facts or create biases.

To perform an assessment of impairment, the forensic psychiatrist needs a good understanding of the job description and the job skills required for the individual's job, so job description is an important document he reviews. Psychiatric, medical, pharmaceutical and substance abuse records may help the evaluator make a more exact diagnosis of a disorder that could cause impairment in occupational functioning. These records can provide background information about sources of conflict, treatment plans, personality traits, and motivational aspects. Employment records, on the other hand, provide indications of difficulties in work performance. The other class of information may come from a variety of sources, such as family members, friends, care providers, and written statements. Since the family members may distort or overstate the symptoms due to the fact that they may benefit from a disability claim, the psychiatrist is careful before considering it. Additionally, conversations with treatment providers may be informative because they may be more open about expressing their professional opinions in an interactive conversation rather than in writing.

Before beginning the evaluation with the evaluatee, the psychiatrist is expected to inform the evaluatee of the nature and the purpose of the examination and obtain consent to proceed. He also clarifies that the evaluation is not for treatment purposes but merely an assessment. The evaluatee is made aware that the results are not confidential since it will be shared with the referral source. The evaluatee is advised of the fact that he has the right to not answer questions and that refusal to certain questions may influence the results and will be noted in the report. The individual is also informed that the final decision is made by the jury or concerning agency, and the psychiatrist merely presents his professional opinion.

Once the examination has begun, the forensic psychiatrist observes the individual's behavior and asks open-ended questions to probe into his mind. When conducting the direct assessment of the evaluatee, the forensic psychiatrist looks for signs and symptoms that would allow him to diagnose the presence or absence of a mental disorder. This can be done by observing the individual's mood, speech, attitude, and nonverbal behavior. Additionally, for this type of evaluation, the forensic evaluator is likely to focus on functional and vocational history. For example, if an individual was a bus driver, it would be important for him to have good judgement to make certain decisions. If, for instance, the driver was waiting at a left turn and had a yellow arrow, it would be important for them to watch oncoming traffic and be able to decide when to safely turn. If the individual's judgement is impaired, he might decide to turn left in front of an oncoming car or to not turn at all until he got a green arrow. If needed, various psychological and neuropsychological testing can be used in disability evaluations. Cognitive tests, such as the Wechsler Adult Intelligence Scale-III (WAIS-III), can provide quantifiable and reproducible evidence of impairment of memory or other cognitive functions due to psychiatric symptoms. Also, a forensic psychiatrist looks out for indications of malingering by observing various aspects of the evaluatee's behavior, such as mood and speech. If the forensic psychiatrist suspects malingering, he may administer a malingering test, such as the Rey Fifteen Item Test. The next step in the evaluation is to correlate the psychiatric disorder with a specific occupational impairment. This can be done by evaluating categories of functioning, complaints of impairment, utilizing psychiatric tests, and by correlating the requirements of the job with the claimed impairments.

Once the direct evaluation and interview is completed, the forensic psychiatrist forms his professional opinion with a reasonable degree of certainty and writes a report based on his findings. The opinion on the case is formed based on recognized deviation and/or limitation in functioning. As mentioned before, a psychiatric illness does not necessarily imply impairment and disability because an illness may not hinder an individual's functioning in either a personal and/or occupational setting. Subsequently, a forensic psychiatrist does not form his opinion solely based on the presence of a mental illness. If an individual does have an illness, the forensic psychiatrist is likely to note the illness because specific disorders are more likely to cause disability. For example, it is common that some psychotic conditions such as severe bipolar disorder cause impairment in occupational functioning. Since many psychiatric illnesses cause symptoms in individuals, it is crucial for the evaluating forensic psychiatrist to specify whether or not the illness is severe enough to cause the certain limitations or restrictions in functioning. The evaluator develops his opinion by scrutinizing the requirements of the individual's job and how the impairment can affect the ability to perform vocational responsibilities. Afterward, the forensic psychiatrist compiles his opinion into a comprehensive report for the referral source. This report is likely to include sufficient information to support the opinions and findings of the psychiatrist. Moreover, not only does the forensic psychiatrist present his findings, but he also answer questions presented to him by the referral source. When answering such questions, a forensic psychiatrist provides his opinion with relevant information to substantiate the answer. After the evaluation of disability is completed, the report is sent to the referral source for consideration. In some instances, the case might go to court which is when the evaluator is expected to testify and present his opinion and findings.

Chapter 3: Evaluation of Guardianship

An evaluation of guardianship is an assessment in which a forensic psychiatrist examines an individual to determine whether or not he has lost the capacity to function independently and if it is in his best interest to appoint a guardian. Mental illnesses, such as dementia, or other debilitating occurrences, such as a stroke, can impact an individual's capacity to meet his own needs. An otherwise capable person may no longer be able to keep track of important appointments and may have difficulty cleaning his home. An important thing to note is that an evaluation of guardianship is not an evaluation to see if the individual can become a guardian and take care of another. In some instances, individuals are affected either by mental disorders, such as dementia, and are unable to properly make decisions and/or function. As a result, a forensic psychiatrist will examine the individual to understand the nature and degree of the proposed ward's incapacity. For an evaluation of guardianship, the individual being evaluated is known as the proposed ward, and the one who files the application is called the applicant.

This assessment is needed to help those who are totally or partially incapacitated in their ability to make decisions, manage their personal property, perform crucial tasks, and care for themselves. By appointing a guardian, the individual can receive aid with the various things he struggles with or is unable to do, such as managing finances or personal health. In the circumstance that the proposed ward is fully incapacitated and incapable of taking care of himself, the guardian is given full authority to make decisions. If however the proposed ward only partially lacks the ability needed to care for himself and his property properly, the court may appoint a guardian with limited powers. A guardian with limited powers would allow the proposed ward to make as many decisions as possible, with the guardian making decisions the individual would be unable to safely make. On the other hand, if the proposed ward is found to be completely capable of taking care of himself, the application is dismissed by the court.

For this type of evaluation, either a family member, friend, or interested party can file an application for the appointment of a permanent guardian. An assessment of the need for guardianship can be done by any physician, but a forensic psychiatrist may be needed if the issue is contested by the proposed ward or someone representing the proposed ward's interests. This evaluation is conducted no earlier than twenty four months before the hearing date set to appoint a guardian for the proposed ward. Afterwards, a forensic psychiatrist submits a written report including his findings and recommendations to the court. In some instances, he may be requested to testify regarding his findings and recommendations in court.

Similar to other evaluations, an evaluator reviews various documents and records before the direct evaluation occurs. Documents that might be analyzed for an evaluation of guardianship may include: medical history, medicines, home environment, social attachments, self-care, and finances. Additionally, in some cases, legal and business records are very beneficial to a psychiatrist's understanding of the alleged incapacitated individual. Medical documents and information are specifically needed in order to support the claim of a need for guardianship. A review of documents, records, and alternate information is important because it allows a forensic psychiatrist to note any indicators of the proposed ward's mental condition or impairment.

During the direct evaluation, the forensic psychiatrist records and collects information on six different factors. These are known as the Six Pillars of Capacity and are important. The six "pillars" are medical condition, cognition, values and preference, everyday functioning, risk and level of supervision, and

means to enhance capacity. During the evaluation, the forensic psychiatrist probes the proposed ward of their functioning on these six factors, to better understand the details of overcoming any challenges and making accommodations when not met. Other aspects that are reviewed with the evaluatee are identifying information, medications, psychiatric, medical and social histories. A mental status examination is also conducted for the evaluation.

Overall, the assessment is conducted to understand if the individual needs a guardian and what the proposed ward may need a guardian for, if any. Various types of competencies assessed in this type of evaluation range from mundane activities, such as driving, to more complex task such as financial transactions and medical care, to capacity to write a will. Different types of tests can be administered to test the psychological condition of the evaluatee. They can be broadly classified into cognitive testing and psychiatric testing. Tests, such as the Independent Living Skills Scales, can be ordered to test the evaluatee's living skills. The evaluating psychiatrist looks for signs that indicate possible incapacity in areas like memory loss, communication problems, poor grooming and emotional distress. Just like any other evaluations, collateral information is very important. This information comes from numerous sources, such as legal documents, medical and pharmacy records, personal discussions with caregivers, family and physicians. After careful consideration of information from many sources, the observations are turned into diagnostic findings, and an opinion is formed. Based on the severity of the diagnosis and the mental status of the evaluatee, the psychiatrist decides whether discussing the opinion with evaluatee is appropriate.

All this work culminates into a written product. Meticulous effort is put forth in writing a report. The report includes personal background information, such as medical history, medications, alcohol and drug history, and psychiatric history. Current level of functioning, which is gathered from various tests or medical status examinations are stated. Along with pertinent collateral information, any diagnosis is highlighted. The reasoning behind any particular diagnosis that is made is explained. A summary and a conclusion is written and any recommendations by the evaluating psychiatrist are clearly stated.

The report is scrutinized for any ambiguity or misperceptions that may arise from an untrained person reading it. A well-written report is not only organized well, contains accurate data, and includes sound interpretation, but also answers the questions posed by the requester. The report contains information, such as whether consent or assent was present and from whom, if any. The report notes that this process is just an evaluation and is not aimed at treating the evaluatee. The non-confidential nature of the relationship between the psychiatrist and the evaluatee is emphasized. Additionally, all the sources of information that are relied upon to draw a conclusion are listed or acknowledged. Including too much detail distracts the reader, and too little may undermine the report, thus creating an impression that the conclusion is lacking in substance. This complication may lead to unnecessary questioning during the testimony period of trial. As a result, care is taken to achieve the right balance. Being objective and descriptive as well as not being derogatory nor judgemental makes a report professional. Similar to other evaluations, after the assessment is completed, the report is sent to the individual who requested the evaluations. Sometimes, the case will go to court, which is when the forensic psychiatrist is expected to testify and present his opinion and findings as objectively as possible.

Chapter 4: Evaluation of Insanity

We now come to one of the more well-known type of assessment, also known as an evaluation of insanity. An evaluation of insanity is an assessment in which a forensic psychiatrist analyzes an individual to determine whether or not the defendant is in a condition to be able to plead not guilty by reason of insanity. Evaluations of insanity have recently fallen into the public's eye, and has had much scrutiny despite the fact that these evaluations are rare. Publicized trials involving insanity evaluations, such as the most recent and successful insanity trial of John Hinckley Jr. (for the attempted assassination on President Ronald Reagan), has led attention being drawn to the subject of forensic psychiatry. To understand an evaluation of insanity, it is important to first understand insanity as a legal defense. The defense of insanity exonerates those with mental disorders from legal responsibility for criminal actions and behaviors under certain circumstances. One can plead this defense if an individual's ability to understand the wrongfulness of his actions is impaired by a mental illness. Essentially, to plead insanity as a defense means that a defendant is asserting an affirmative defense. An affirmative defense is when the defense counsel introduces evidence, which will hopefully negate criminal liability, even if it is proven that the defendant committed the alleged crime he is being charged for. By pleading insanity, the defendant is essentially admitting that he committed a criminal act and is seeking to excuse his offense because of his mental illness that satisfies the definition of legal insanity. Furthermore, people who are proven to be insane at the time of the committed crime are not considered legally or morally guilty.

As previously mentioned, the 1982 case of the United States v. John Hinckley Jr. was a rare instance where the defendant was found not guilty by reason of insanity. The trial of John Hinckley Jr. was very significant because it led to many changes regarding the insanity defense and needs to be learned about in order to understand the defense. Before the verdict of Hinckley, the burden of proof commonly lay with the prosecutor, which forced the prosecution to prove sanity. The jury found Hinckley not guilty, which caused public uproar. In fact, Congress was holding hearings on the insanity defense only a month after the verdict. Numerous states then reformed their legal laws so that the defense was given the burden of proof, meaning that the defense attorney was required to prove insanity. Other states established a new defense called "guilty but mentally ill" while Utah outright abolished the defense of insanity. Furthermore, Congress limited the defense by making it much more difficult for the defense to prove not guilty by reason of insanity.

To determine if the affirmative defense is applicable, many states utilize an exam called the M'Naghten Test to determine if an individual is legally insane. In the M'Naghten Test, a person is legally insane if his mental illness prevents him from knowing the difference between right and wrong. This test, however, has been replaced in some states by the Brawner Test. Under the Brawner Test, the defendant is considered insane if he lacks the ability to understand the criminality of his actions or conform his behavior to meet legal objectives. Other states have replaced both of these tests with the Irresistible Impulse Test. This test determines insanity by checking if a mental disorder prevents an offender from resisting the urge to commit an illegal act that he know is wrong.

An evaluation of insanity is needed in order to provide information necessary for the jury to come to an informed verdict. This is especially important for cases that require an insanity evaluation because these cases are frequently intense and Class A or first degree felonies. The classification system varies between states, so for further reference, I will be utilizing first degree or capital felony, as used in the State of Texas.

Since first degree and capital felonies are very serious and can result in life imprisonment, the verdict reached by a jury is significant and needs thorough deliberation.

For criminal cases, an assessment of sanity is requested by both the prosecution and defense. Since the concept of insanity is an affirmative defense, the burden of proof lies with the defense. As a result, a defense attorney is likely to hire a psychiatric expert in order to support the claim of not guilty by reason of insanity. In Texas and many other states, the defense must prove the affirmative defense by a preponderance of evidence standard. This standard eases the burden of proof and requires that at least fifty percent of the evidence supports the claim. If the defense attorney is able to prove that the defendant was unaware of the wrongfulness of his actions at the time of the offense by utilizing the preponderance of evidence standard, the State must then prove the sanity of the defendant beyond a reasonable doubt, which is much more difficult. Due to that, the prosecutor is driven to rebut the defense by utilizing the opinion of a different forensic psychiatrist before the defense proves insanity by a preponderance of evidence to avoid having to prove sanity beyond a reasonable doubt.

The forensic psychiatrist obtains permission from the defense attorney before starting an interview. The evaluator then informs the defendant that the interview is non-confidential and explains the difference between a forensic and a clinical examination. Oftentimes, evaluators elect to review all the collateral information and medical history records that are available before they interview the defendant. Collateral information may include lab results, witness statements, and police reports. It can be useful to review informational documents, such as toxicology reports from blood or urine samples taken at the time of arrest and criminal history if available, because they can give a forensic psychiatrist valuable insight on their behavior and tendencies beforehand.

The forensic psychiatrist performing an insanity defense evaluation strives to answer the following questions: Did the accused suffer from any mental disorder at the time the crime was committed? Did the mental disorder in any way cause the criminal behavior? If the above is true, were the conditions for the legal test for being found not criminally responsible satisfied? Additionally, many aspects of the defendant's legal history are explored. For example, has the defendant been arrested previously, for what type of crimes and how many times, etc. The evaluator might probe the defendant on the details of drug and alcohol consumption in order to obtain a critical substance abuse history. Also, this evaluation is more focused on the defendant's thinking and behavior at the time of the crime as opposed to a clinical evaluation, which is focused on the patient's complaints and present illness. Then, the forensic psychiatrist obtains the defendant's account of the happenings before, during, and after the alleged crime. He dives into the details about the motivation, mental status, and self description of behaviors. The evaluator then matches the defendant's report with different types of collateral data he has on hand. If he happens to find any discrepancies, he may ask the defendant for an explanation.

The referring attorney or the court gathers collateral information and provides it to the evaluator. The forensic psychiatrist does not contact the opposing counsel or any other sources of information before consulting with the retaining attorney. He first reviews all the information at hand and identifies any missing information that could help develop the opinion. For instance, the psychiatrist might find school records important when any intellectual disability is suspected. If he requests any information but does not receive it, this detail is usually noted in the report, along with the denial reason. A systematic review of collateral data and of information gathered from the interview helps the evaluating psychiatrist formulate a well reasoned opinion.

It is possible that defendant evoking the insanity defence may malingering mental disorder symptoms. Likewise, it is also possible that defendants who suffer from paranoia or other disorders entering an insanity plea may try to hide their symptoms. As a result, forensic psychiatrists carefully consider these issues. The evaluating psychiatrist ensures a lack of bias by comparing and contrasting his own conclusion with the information obtained and with other sources. It is significant to remember that there is a risk of the evaluation being undermined in court if there is any hint of bias. Therefore, all the collateral information that is available, such as interviews, medical and pharmacy history, legal history, police records, school records, psychiatric treatment plans are objectively reviewed and revisited as needed.

Usually, the retaining attorney decides whether the forensic psychiatrist will write a report or not after the findings are orally communicated him. The written report is usually used by the presiding judge and attorneys. It includes details about the case, facts, the evaluator's opinion, and any supporting data. It also calls out limitations, if any, such as not having access to requested information or having an uncooperative defendant. The report may contain identifying information, referral sources, acknowledged questions, sources of information, personal, family and educational history, employment history, medical and psychiatric history, drug and alcohol history, legal history, results of any tests conducted, such as mental status examination, psychological and physical examination, and a psychiatric diagnosis, if any.

Chapter 5 : Evaluation of Testamentary Capacity

As the Baby Boomers grow older, a large amount of will contests have risen and caused a need for evaluations of testamentary capacity. An evaluation of testamentary capacity is an assessment in which a forensic psychiatrist is requested to provide an opinion on an elderly individual's mental capacity to make sound legal decisions, such as writing or modifying a will. Testamentary capacity is the ability to create a valid will and to have the mental capacity to execute a will when it was signed. For an individual to have testamentary capacity, he must be able to understand the process of creating a will, the implications of his actions, the individuals the will may concern, his possessions, and be able to resist outside influence. This pressure is known as "undue influence", and can cause a will to be found invalid if it is detected by a forensic psychiatrist. Undue influence can occur when an elderly testator's true intentions are influenced by another because of various reasons, such as dementia and isolation. Otherwise, an individual may simply lack the testamentary capacity because of mental disorders, such as cognitive impairment. These assessments are significant because a forensic psychiatrist acts as an expert witness in a will contest and presents his expert findings.

It is important to note that there are two types of testamentary capacity evaluations a forensic psychiatrist may conduct. The first type, a contemporaneous evaluation, is requested to establish the mental capacity of an individual before he modifies or executes a will to prevent a will contest case from occurring. This type of evaluation is commonly requested by prudent attorneys in order prevent family members from contesting the changes after the death of the testator. People are likely to contest a will when an individual is disinherited or added. In other instances, a will contest may occur when an never before included organization is added, among other reasons. On the other hand, the second type of evaluation, known as a historical reconstruction, is conducted when a will is being contested after the testator has passed away. Such an evaluation becomes necessary when a family member or close friend claims that the will invalid for reasons such as abuse, exploitation and/or undue influence. Sometimes, historical reconstructions are considerably more difficult to do if the testator is unavailable for an examination. A testator may be deemed unavailable if the testator has already passed away or if his mental condition has changed so drastically that the evaluation would not accurately signify his mental capacity at the time of the modifications or creation of the will

\. In addition, a forensic psychiatrist's sources of information for such an evaluation are limited to medical records, psychological test results, personal notes, texts, diary entries, adult protective services reports, police reports, phone conversations, and emails. In some cases, all the pertinent information is not provided to the psychiatrist by the attorney because either he believes certain information is insignificant or because he wishes to cast his client in the best light. This information can be detrimental to an expert opinion when such facts arise in court and surprise the expert.

For this evaluation, forensic psychiatrists become involved in such cases when either the petitioner (the individual challenging the will) or the respondent (the individual supporting the validity of the will) requests an evaluation. Since a forensic psychiatrist performs an objective examination that is not based on

the hopes of the requestee, the evaluation is conducted without bias. For example, if the attorney of the petitioner requested an evaluation, the forensic psychiatrist would not conduct an evaluation while specifically looking for exploitation or undue influence. Additionally, a forensic psychiatrist testifies on the testator's vulnerability to undue influence and not on the matter of whether or not undue influence actually occurred. Testifying to the conclusion that there was undue influence would be speculation, which is objectionable in court.

When analyzing a claim of undue influence or lack of testamentary capacity, forensic psychiatrists sometimes use the seven Carpenter Factors. The seven factors are criteria utilized in order to determine active procurement, which is the ongoing action of taking possession of something. One important thing to note is that these factors are not mandatory. These factors were established in the Florida Supreme Court case, *In re Estate of Carpenter*, in which the validity of a will was contested due to the suspicion of undue influence by the decedent's three sons. The first factor is the presence of the beneficiaries at the execution of the will. The next factor is the presence of the beneficiaries on the occasions when the testator expressed a desire to create a will. The third factor is the recommendation by the beneficiary of an attorney to draw the will. The fourth recommendation is the knowledge of the contents of the will by the beneficiary prior to execution. The fifth factor is the giving of instructions on preparation of the will by the beneficiary to the attorney drawing the will. The next factor is the securing of witnesses to the will by the beneficiary. The final factor is the safekeeping and physical possession of the will by the beneficiary after the execution.

Like other evaluations, a forensic psychiatrist starts by reviewing various documents and records. However, depending on the type of evaluation, an interview of the testator may not occur later on. In the instance that a testator has already passed away, collateral information becomes even more important to evaluations of testamentary capacity. A review of documents, records, and alternate information is beneficial to the evaluator because it allows him to learn information that might not have been found otherwise. In many instances, the forensic psychiatrist will review medical records, psychological test results, personal notes, diary entries, adult protective services reports, police reports, and emails, texts, and conversations with relevant individuals in order to gain insight.

As mentioned earlier, since evaluations of testamentary capacity have two types, interviews are not always conducted. A direct examination only occurs if the forensic psychiatrist is asked to do a contemporaneous evaluation in order to establish the testator's mental capacity before he executes his will. For this type, the individual is still alive and is having an evaluation done to prevent any later disputes. During the interview, the forensic psychiatrist would simply examine the individual to determine whether or not the testator has testamentary capacity. To determine testamentary capacity, the evaluator must find that the testator knows the possessions others would expect to inherit, understands the extent of his property, and is capable of forming a logical plan for the distribution of his property and possessions. These three requirements are also known as the Greenwood-Baker rule, which is considered the standard measure of testamentary capacity in the States.

The additional information found by reviewing collateral sources and/or interviewing the testator helps a forensic psychiatrist compose a written report. This report is diligently written and includes all the pertinent information. For example, a evaluation of testamentary capacity report may include information on the testator's susceptibility towards undue influence, his relationships with various family members, and his cognitive functioning. The reasoning behind the forensic psychiatrist's findings is explained and the conclusion is clearly stated in order to later help the court and attorneys. Additionally, in the written report, all the sources of information that are relied upon are listed. Similar to other evaluations, after the

evaluation is finished, the report is sent to the retaining individual. In some instances when the case does go to court, the forensic psychiatrist will testify and present his opinion and findings on the testamentary capacity of the individual to the court. Frequently, cases that require historical reconstruction evaluations are the ones that end up going to court because of an individual challenging the validity of the will.

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