



Pergamon

Archives of Clinical Neuropsychology
19 (2004) 465–473

Archives
of
CLINICAL
NEUROPSYCHOLOGY

Detecting malingering: a survey of experts' practices

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Accepted 17 April 2003

Abstract

A survey addressing practices of 'expert' neuropsychologists in handling financial compensation claim or personal injury litigation cases was carried out. Potential participants were identified by publication history. Responses were obtained from 24 out of the 39 neuropsychologists who were surveyed. Approximately 79% of the respondents reported using at least one specialized technique for detecting malingering in every litigant assessment. Half stated that they always give specialized tests at the beginning of the assessment. The Rey 15-Item test and the Test of Memory Malingering were the most frequently reported measures. Respondents also reported frequent use of 'malingering' indexes from standard neuropsychological tests. Reported base-rates varied, but the majority of respondents indicated that at least 10% of the litigants they assessed in the last year were definitely malingering. Respondents were split on the practice of routinely giving warnings at the outset of assessments that suboptimal performance may be detected. However, when the client's motivational status was suspect, more than half (58.3%) altered their assessment routine at least on some occasions, by encouraging good effort (70.8%) or administering additional SVTs. A minority directly confronted or warned clients (25%), terminated the examination earlier than planned (16.6%), or contacted the referring attorney immediately (29.2%). Respondents almost always stated some opinion regarding indicators of invalidity in written reports (95%). However, 41.7% rarely used the term 'malingering' and 12.5% never used the term. Most respondents (>80%) instead stated that the test results are invalid, inconsistent with the severity of the injury or indicative of exaggeration.

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Keywords: Malingering; Expert-practices; Survey

Neuropsychologists often play an important role in personal injury litigation concerning brain damage. Given the importance of their opinions, neuropsychologists require reliable

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and valid measures, not just of cognitive functions and psychosocial adjustment, but also of symptom exaggeration or malingering. Of equal importance to the tools used is the way in which they are employed. Studies have shown that the outcome of the examination can be influenced by factors such as the choice of tests (e.g., Gervais, Green, & Allen, 1999), the order in which tests are given (Guilmette, Hart, Sparadeo, Buongiorno, & Whelihan, 1996), and the use of warnings that exaggerated deficits can be detected (e.g., Johnson & Lesniak-Karpiak, 1997; Youngjohn, Lees-Haley, & Binder, 1999).

Neuropsychologists who perform independent medicolegal evaluations need to be well versed on the utility and limitations of current assessment tools and methodologies, both for ethical reasons (Slick & Iverson, 2003), and in order to maximize success in the legal arena. According to the court decision in the Frye case (Frye v. United States, 293 Fed. 1013 D.C. civ. 1923) and further supported in the Daubert case (Daubert v. Merrell Dow Pharmaceuticals, 113 S.Ct. 2786, 1993), the *general acceptability* of procedures used by *experts* is one criterion for admissibility of scientific evidence. Thus, information about the assessment practices of experts may have important implications for practice in the legal arena. However, the methods favored by experts for detecting malingering have not been systematically studied. It is therefore not known which methods are most common or whether any particular tests or techniques prevail. For example, the use of at least one and preferably two or more validated measures of symptom validity has been recommended by numerous authors (e.g., Inman & Berry, 2002; Spreen & Strauss, 1998), but it is not known if this is routine practice for experts, nor do we know which tests are most commonly used.

In addition to being well versed on the state of the art in techniques of assessment (i.e., the methods used by experts), neuropsychologists need to have a good working knowledge of the differential diagnoses that they are likely to encounter in their practices, including base-rates (Gouvier, 1999). In the case of malingering, base-rates are particularly difficult to estimate, in part because those who malingering actively seek to avoid detection, and in part because the need for diagnostic standards has only recently started to be addressed (Slick, Sherman, & Iverson, 1999). To date, available estimates of base-rates of malingering come from studies on the prevalence of cases meeting various ad hoc criteria, the prevalence of specific scores or other indicators, or from surveys in which neuropsychologists report prevalence rates within their practices based on whatever idiosyncratic criteria they use (e.g., Mittenberg, Patton, Canyock, & Condit, 2002). Mittenberg et al. surveyed 131 neuropsychologists on the prevalence of malingering encountered in their practice. They reported a prevalence of probable malingering of 29% among personal injury cases, 30% among disability cases, 19% among criminal cases, and 8% among medical cases. Similar estimates have been reported in other studies (Binder, 1993; Green, Lees-Haley, Allen, & Rohling, 2001; Greiffenstein, Baker, & Gola, 1994).

There is currently no professional consensus on the issue of whether or not to warn examinees that suboptimal performance may be detected. Slick and Iverson (2003) argue that it is good practice from an ethical perspective to give litigants a *general* warning regarding the fact that malingering may be detected. There is evidence that such general warnings are unlikely to significantly reduce the sensitivity of techniques for detecting suboptimal performance (e.g., Suhr, 2002). In contrast, others (e.g., Youngjohn et al., 1999) have cautioned that warning examinees of the presence of *special techniques* to detect malingering is likely to reduce the sensitivity of such techniques. Regardless, it is not known how often, if ever, experts give ei-

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