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POSITION PAPER

Third-party Assessments/Independent Medical Evaluations

Brad D. Booth, MD, FRCPC, FCPA, DABPN[1]; Joel Watts, MD, FRCPC, DABPN[2]; Gary Chaimowitz, MB, ChB, FRCPC, DFCPA[3]

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Introduction

Psychiatrists and other health professionals are trained to provide clinical care for their patients. Within this role as a treatment provider, psychiatrists have a fiduciary duty to their patients,[1] bound by tenets of professional and ethical medical practice which include *primum non nocere* (i.e., first, do no harm). This principal of non-maleficence has primacy in medicine. Part of fiduciary duty also includes the principle of acting in the best interest of our patients (i.e., beneficence). Despite these ethical duties, in current medical practice, physicians may be required to balance other competing interests in what otherwise would be considered a pure clinical encounter. This could include protecting third parties from harm under a duty to warn/protect[2] or following legislated requirements such as reporting suspected child abuse.[3]

While most are familiar with these aspects of routine clinical practice, there are times psychiatrists are called upon not to treat a "patient" but instead to provide expert medical opinions to a third party—an independent medical evaluation (IME). There are many other settings where psychiatrists' professional opinion is sought by a third party, including:

- fitness to work for employers
- accommodation requests to allow an employee to return to work
- writing a "sick note" or medical leave note

[1] Associate Professor, Department of Psychiatry, Division of Forensic Psychiatry, University of Ottawa, Ottawa, Ontario, Canada; Forensic Psychiatrist, Royal Ottawa Health Care Group, Ottawa and Brockville, Ontario, Canada
[2] Assistant Professor, Department of Psychiatry, Division of Forensic Psychiatry, University of Ottawa, Ottawa, Ontario, Canada.; Forensic Psychiatrist, Royal Ottawa Mental Health Centre, Ottawa and Brockville, Ontario, Canada; Former president, Canadian Academy of Psychiatry and the Law (CAPL)
[3] Head of Forensic Psychiatry, St Joseph's Healthcare Hamilton, Hamilton, Ontario, Canada; Professor, Department of Psychiatry and Behavioural Neurosciences, McMaster University, Hamilton, Ontario, Canada

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- fitness to practice for professional bodies
- malpractice cases
- workplace compensation board cases
- psychological harm in civil litigation
- parental fitness
- child custody and access cases
- financial capacity and testamentary issues
- involuntary hospitalization
- capacity to consent to treatment
- disability benefits for provincial support programs
- disability benefits for private insurance
- disability tax credit qualification
- criminal responsibility and fitness to stand trial
- sentencing hearings for youth and adult offenders

At times, practitioners may provide their opinions to third parties as part of routine clinical practice. For example, a psychiatrist may be asked to complete an application for a provincial disability program by a patient. Although occurring in a doctor–patient relationship, the psychiatrist's role in such a case is ultimately to give an opinion about diagnosis and how this impacts functional capacity. While this is not technically an independent assessment and there is an underlying duty to assist the patient and do no harm, psychiatrists still have an overriding duty to provide truthful answers to the questions posed on the application and to practise ethically and professionally. Many of the same principles apply in both clinical practice and third-party assessments, although an IME puts a higher focus on the unbiased opinion, at times with negative consequences for the evaluee. Such evaluations may inherently result in the practitioner exhibiting a conscious or unconscious therapeutic bias.

This position paper advocates that all psychiatrists/trainees should have some training in independent assessment. It is important that psychiatrists doing third-party/independent evaluations are aware of their dual role and adhere to guiding principles.

Discussion

Psychiatric training focuses on the understanding and treatment of mental disorders. Psychiatrists are taught a biopsychosocial approach to understanding why individuals may struggle in life, whether they present with simple psychological suffering or the most severe form of mental illness. Psychiatrists become adept at formulation and achieving a deep understanding of human behaviour. While these skills are learned with the goal of decreasing suffering and ultimately providing treatment, they are not limited in this way. Nor are the effects of a patient's mental illness confined to their internal functioning. When the mind's ability to process information, problem solve and otherwise function becomes compromised by stress and psychiatric illness, the fallout is not confined to the individual. Indeed, psychiatric illness can cause significant impact on overall function, far greater than many physical illnesses.

The mind's influence on behaviour, stress and psychiatric illness can result in dysfunction in many areas of life. This can include one's ability to work, to act professionally, to parent, to enter contracts and to follow social norms—to function in virtually all areas of daily life. Given psychiatrists' expertise in human behaviour and mental disorders, they may be sought out to clarify why an individual is struggling in any of these realms.

Most psychiatrists receive training or experience in navigating the ethical issues involving roles that may conflict with providing patient care, including acting as an independent evaluator. As with any area of medicine, appropriate training and experience is needed to function competently.

An expert witness needs to have appropriate training before giving expert testimony. The courts have also indicated that advocating for one side and not being impartial is unacceptable. A judicial inquiry[4,5] brought a scathing review of expert witness training and standards in criminal courts.

A comprehensive study of resident education and experience in medico-legal issues in Canada identified significant perceived deficits in training, including in risk assessment, testimony, civil commitment, duty to warn and disability evaluation.[6] These areas are arguably fundamental skills and knowledge in which psychiatrists require training and supervised experience.

Given the unique interplay of the brain and mental health on human behaviour, whenever a psychiatrist gives an opinion about diagnosis, prognosis, risk and behaviour, they can be drawn into legal proceedings. They may even seek to provide opinions within the medico-legal context. Regardless, psychiatrists must be aware that third parties expect us to act as independent experts despite any relationship with the patient.

There are many issues for the psychiatrist to consider as they enter into "expert witness" territory.[7] These include the role of experts in legal proceedings to provide

education, the use of hearsay information in forming opinions, the use of draft reports and the danger of bias. Particularly relevant is the issue that a treating physician maybe called as a "participant expert" and give opinions which can hold weight in court proceedings.[7,8] Alternatively, a psychiatrist may appear as a "litigant expert" hired to independently evaluate an individual for that case or as a "non-party expert" if evaluating independently for a different purpose, yet asked to participate at a later date in a medico-legal case.

Current Policies and Guidelines

Given the significant issues noted, there have been a number of guidelines and jurisdictional policies regarding assessments for third parties. The American Academy of Psychiatry and the Law (AAPL) established guidelines for the evaluation of psychiatric disability,[9] which highlight important definitions and concepts in disability. Physicians focus on symptoms and making a diagnosis in clinical medicine, while in disability assessments, they will also focus on restrictions and limitations. A "restriction" is something an individual should avoid to prevent worsening of the underlying condition. For example, an individual with back pain from degenerative disc disease should avoid lifting a 25-kg box. Although they can do this, they would have an increased risk of an acute exacerbation in their back pain the following day. In psychiatry, an individual with unstable bipolar illness should avoid shift work. They can do an overnight shift, but this will significantly increase the risk of a manic relapse.

A "limitation" or "impairment" is something an individual cannot do due to their illness. For example, an individual with back pain from degenerative disc disease may have muscle weakness. They could be physically unable to lift a 25-kg box due to the muscle weakness. In psychiatry, an individual with unstable bipolar illness in a major depressive episode may be "physically unable" to maintain concentration for 15 minutes or to maintain requisite emotional stability in a job. For employers, the diagnosis or other personal health information often cannot be disclosed—it is actually irrelevant to the employer. The limitation (e.g., focusing for 15 minutes) could be disclosed with permission, but the cause (e.g. depression, ADHD or low hemoglobin) would not. The limitation is most important to the third party requesting this information.

The AAPL guidelines further highlight that at times, even in IMEs, there is a limited doctor–patient relationship established with some potential responsibilities (e.g., suicide risk assessment). It is noted that treating physicians should generally avoid giving legal opinions about their patients due to the potential of "negative" opinion disrupting the therapeutic relationship and potential difficulties with conscious and unconscious patient–advocacy (therapeutic) biases. Regardless of these issues, they note that all physicians have a duty to strive to be honest and objective in forming their opinions. Given the importance of third-party assessments and the potential for problems related to these issues, most colleges of physicians in Canada and the Canadian Medical Protective Association (CMPA) have established policies and guidelines in this area.

The CMPA has guidelines for preparing medico-legal reports[10] and for doing IMEs.[11] Many provinces[12-19] provide guidance for their physicians in these areas. While important, these guidelines do not necessarily address the complexities and specific issues encountered within the field of psychiatry.

The World Psychiatric Association,[20] the Australian Medical Association[21] and the Royal Australian and New Zealand College of Psychiatrists[22] have also provided useful advice. Some remind us that in psychiatry, we bring special empathetic listening skills that may induce an evaluee to act in a self-damaging manner. With these skills, an individual with deep-rooted trust issues may disclose information, only to see this information be used in a way that causes them to feel betrayed. This might then subsequently impair their ability to get assistance for their illness. The themes of guidelines on this subject are consistent. Namely, there are standards for doing evaluations and producing reports in a timely manner. Informed consent and the role and independence of the evaluator must be highlighted to the evaluee to minimize the risk of an evaluee disclosing more than they would if informed of the limits of confidentiality or of a therapeutic bias on the part of the evaluator. Professional conduct is also expected, including civil interactions with the evaluee and in giving opinions that are scientifically supportable, unbiased and within one's area of expertise.

In addition to guidance from professional bodies, there are a number of organizations that provide training or education around evaluation for third parties.

Conclusion

While psychiatric evaluation is usually linked to treatment, psychiatrists have specialized skill and knowledge in diagnosis and other opinion issues. Regular

work with patients may take psychiatrists into the medico-legal realm where they have overriding ethical and legal obligations including a duty to be truthful, a fiduciary duty to their patients and a duty to respond honestly to third parties. Clinicians may voluntarily decide to proffer themselves as an expert in disability evaluations, psychological harm cases, family court issues, criminal matters or other issues. Regardless, these roles are specialized and require specific training, experience and expertise to navigate.

Unfortunately, when inexperienced individuals or unethical practice come to legal or public attention, the entire profession of psychiatry is tarnished. As such, the CPA has established the following recommendations on how to proceed with IMEs and third-party assessments. Many of these principles apply to routine psychiatric practice.

Recommendations

The CPA takes the following position with respect to independent medical assessments:

(1) All psychiatry residents should have education and experience in independent psychiatric evaluation and related ethical issues, including disability evaluation, duty to protect and other areas.

(2) Psychiatrists will only provide opinions that are within their area of training and expertise.

(3) Psychiatrists who choose to provide IMEs will also ensure that they keep up-to-date with guidelines about independent evaluations.

(4) Psychiatrists will be aware of potential conscious and unconscious biases in providing opinions to third parties.

(5) Psychiatrists will provide opinions that are truthful, fair, objective and non-partisan regardless of who has retained them or of a therapeutic relationship with the patient.

(6) Psychiatrists will recuse themselves from giving independent opinions if they are unable to provide opinions that are truthful, fair, objective and non-partisan.

(7) Psychiatrists will ensure evaluees give informed consent, which includes the evaluator's role to provide an opinion, which may be helpful, neutral or harmful to the evaluee's interests.

(8) Psychiatrists will take appropriate clinical steps if an emergency, such as suicide or violence risk, arises during a third-party assessment.

(9) Treating physicians providing information in independent contexts will strive for objectivity and truthfulness and must disclose how the treatment relationship may affect their opinion.

(10) Psychiatrists will be aware of and adhere to policies and guidelines in their jurisdictions relating to third-party assessments.

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