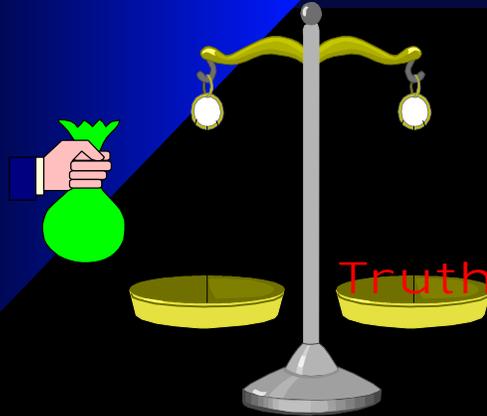
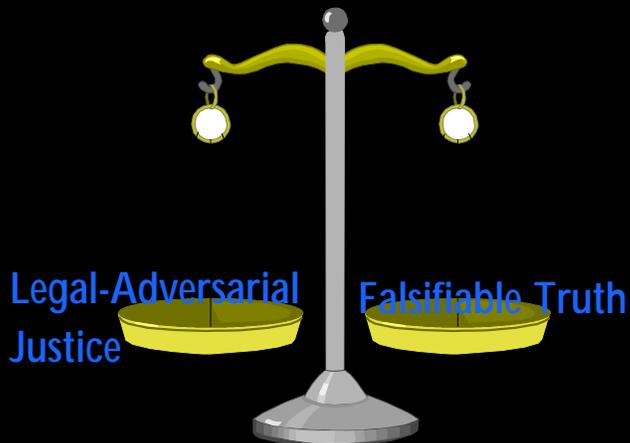


# Ethics in Medicolegal Compensation Contexts: Identifying, Avoiding & Addressing Misconduct



Presented at  
BIAA's 21st Symposium, Minneapolis, 2002  
Michael F. Martelli, PhD  
Concussion Care Center of Virginia  
Pinnacle Rehabilitation & Tree of Life  
Glen Allen, Virginia 23060  
<http://VillaMartelli.com> email: [mikefm@erols.com](mailto:mikefm@erols.com)

## Adversarialism vs Science



# Medicolegal Roles:

- TREATING CLINICIAN
- EXPERT WITNESS
- TRIAL CONSULTANT

## ADVERSARIAL V SCIENTIFIC METHOD

➔ Trial Attorney	➔ Treating Clinician	➔ Independent Examiner	➔ Trial Consultant
➔ Win Case ➔ Max/Min Award;	➔ Clinical DX & TX -> Recovery	➔ Independent DX, Infer Causation, Apportion	➔ Assist Atty Advocacy
➔ Adversarial Advocate	➔ Dr - Pt Relationship ➔ Present Clin. Findings	➔ Present Indep. Findings	➔ Use Scientific Knowledge to Assist Atty Advocate
➔ Best Advocacy	➔ Competent Clin. DX & TX	➔ Objectivity & Independence	➔ Accurate Rep. Scientific Knowledge
➔ Black/White ➔ Either/Or	➔ Multifactorial	➔ ???	➔ ???

## Vignettes

- Treating Doc does not include data re: premorbid presence of TBI symptoms
- Defense IME does not consider premorbid superior abilities, interprets average scores as "No TBI"
- Treating Doc doesn't consider Pain and concludes permanent TBI deficits
- IME expert helps referring Atty impeach opposing expert by disclosing that he has been subject of previous ethics complaints
- Doc accepts IME of person when he previously performed Clinical Exam of person in opposing side of suit who purportedly caused PTSD in examinee

### *Surveys on Ethical Concerns of Psychologists: Pope & Vetter (1992)*

#### **Major Ethical Concerns in Clinical Psychology Practice: APA Membership (N=679)**

- ➔ #1 Confidentiality
- ➔ #2 Dual Relationships
- ➔ #3 Payment Concerns
- ➔ #4 Teaching / Training Concerns
- ➔ #5 Forensics

**Surveys on Ethical Concerns of Psychologists:  
Brittain et al (1997)**

**Major Ethical Concerns in Neuropsychological Practice:  
NAN Membership (N=679)**

➤ Examiner Competence	64%
➤ Inappropriate Use of Tests	61%
➤ Conflict Between Law and Ethics	55%
➤ Misrepresentation as a Neuropsychologist	53%
➤ Non-Neuropsychologist Performing Evaluations	52%
➤ Conflict Between Organization and Ethics	52%

**Surveys on Ethical Concerns of Psychologists:  
Brittain et al (1997)**

**Major Ethical Concerns in Neuropsychological Practice:  
NAN Membership (N=679)**

➤ Professional Witness / Hired Gun	45%
➤ Release of Raw Data	45%
➤ Lawyer Doctor Shopping	43%
➤ Dual Relationships	42%
➤ Confidentiality	41%

# Applying General Medical Ethics to the Medicolegal Arena

Based on the primary ethical principle of

**Respect for Others**, four core bioethical principles (Beauchamp & Childress, 1994):

- ➔ **Autonomy:** *Self-determination re: healthcare-related decisions*
- ➔ **Non-maleficence:** *Doing no harm*
- ➔ **Beneficence:** *Patient welfare promotion*
- ➔ **Justice:** *Equitable distribution of the burdens & benefits of care*

## Principles of Medical Ethics, June 2001

- ❑ A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- ❑ ... uphold the standards of professionalism, be honest in all interactions, strive to report physicians deficient in character, competence or engaging in deception
- ❑ ... respect the law, also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- ❑ ... respect rights of patients, colleagues, other health professionals, and safeguard patient confidences and privacy within constraints of the law.
- ❑ ... continue to study, apply, advance scientific knowledge, maintain commitment to medical education, inform patients, colleagues, and the public, obtain consultation, use the talents of other health professionals when indicated.
- ❑ ... except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
- ❑ ... responsibility to contribute to improve community, public health.
- ❑ ... while caring for patient, regard responsibility to patient as paramount.
- ❑ ...shall support access to medical care for all people.
  - ❑
  - ❑ *Adopted by the AMA's House of Delegates June 17, 2001*

# The doctor:

- ✓ Spent only one half hour with me and stuck me with a technician
- ✓ and talked mostly about why I didn't think I could work and if I ever went out on disability before, or if I was emotionally disturbed
- ✓ ...but spends hours and hours with the big shot decision makers
- ✓ ...and spent more time giving me trick (malingering) tests than talking with me
- ✓ ...and wrote a report that let SSD deprive me of the disability I deserve



We See What We Look For,  
We Look For What We Know

*Goethe*

## • Survey of Attitudes Regarding Workers Compensation (W.C.)

Question	Disability Evaluating Professionals (N=27)	Medical Psychology Service Staff (N=7)	Case Managers (N=16) ; 7 W.C.
1: % of Injured Workers Who Exaggerate/ Malingering	19.2	24.7	28.5
2: % Injured Worker that W.C. Insurance Treats < Fairly	49.2	62.5	23.2
3: % Employers Who Treat Injured Workers < Fairly	53.5	41.2	32.7
4: Likelihood Employer Would Treat You (if injured) < Fairly	43.75	54.2	46.4
5: Likelihood W.C. Would Treat You (if injured) < Fairly	60	65.9	48.9
IV-3: Sex	66% Female	57% Female	100% Female

# Objectivity and Bias in Clinical Practice

Martelli, M.F., Zasler, N.D. & LeFever, F. (2000). Preliminary consumer guidelines to choosing a well suited neuropsychologist for assessment and rehabilitation of accquired brain injury. *Brain Injury Source*, 4, 4, 36-39.

## Three shades of bias:

- ➔ Plaintiff Advocate;
- ➔ Defense Advocate;
- ➔ Retaining Side Advocate
  - ➔ All = maleficence to opposing side in legal proceedings.
  - ➔ Two (plaintiff, defendent) = probably mixed.



# The Federal Judiciary Center Study (2000)

Johnson, M.T., Krafka, C. and Cecil, J.S. Expert testimony in federal civil trials: a preliminary analysis. Federal Judicial Center, 2000.

- Surveyed All Federal Judges and Attorneys from Docket Cases
  - ➔ 5 point Likert (1=Completely Objective to 5 = Completely Biased)
  - ➔ High Response Rates
    - ➔ Average Ratings of Experts: approximately 3.85
    - ➔ Similar Results in 1990 and 2000 Studies



## ETHICAL GUIDES

- A.P.A. Draft 7, 2002, Ethical principles of psychologists & code of conduct
- A.P.A. Div41 (Psy & Law) Specialty Guidelines
- Sweet et al, 2002
- Martelli, Zasler, et al; 2001, 2000, 1999
- Binder & Thompson, 1995
- AAPM&R (1992) Expert Witness Testimony. White Paper.
- AMA, Council on Ethical & Judicial Affairs (1996) Code of Medical Ethics: Current Opinions with Annotations.

### APA Ethical Principles of Psychologists & Code of Conduct, Draft, 2002

Principle	
A: Beneficence & Non-malificence	B: Fidelity & Responsibility
C: Integrity	D: Justice
E: Respect for Peoples Rights & Dignity	
Standard	Title
1.01 (Resolving Ethical Issues)	Misuse of Psychologist's Work
1.02, 1.03	Conflict - Ethics & Law / Organizational Demands
1.04	Informal Resolution of Ethical Violations
1.05, 1.07	Reporting Ethical Violations, Improper Complaints
2.0, 2.03 (Competence)	Boundaries of Competence, Maintaining Competence
2.04	Bases for Scientific & Professional Judgements
3.04 (Human Relations)	Avoiding Harm
3.05	Multiple Relationships
3.06	Conflict of Interest
3.07	Third-party Requests for Service
3.10	Informed Consent
4.02 (Privacy & Confidentiality)	Discussing Limits of Confidentiality
5.01 (Advertising, Public Statements)	Avoidance of False or Deceptive Statements
6.01 (Record Keeping & Fees)	Documentation of Professional & Scientific Work
6.06	Accuracy in Reports to Payors and Funding Sources
9.02 (Assessment)	Use of Assessments
9.03, 9.04	Informed Consent in Assessments, Release of Test Data
9.06, 9.11	Interpreting Assessment Results, Maintaining Test Security

## APA Div41: Forensic Psychology Specialty Guidelines

*I. PURPOSE AND SCOPE:* Amplifies current aspirations of desirable professional conduct for psychologists conducting forensic work

*II. RESPONSIBILITY:* Provide services of highest professional standards and ensuring reasonable effort that services are used forthrightly and responsibly

*III. COMPETENCE:* Recognize and accurately inform re: competence and limitations; Maintain competence; Maintain knowledge and understanding of relevant legal and professional standards, civil rights of litigating parties; Consider personal values, beliefs, and relationships re: litigating parties.

*IV. RELATIONSHIPS:* Inform re: fee structures, potential conflict of interests, competence and limits, known scientific bases and methodology limitations, qualifications; Decline contingency fee arrangements; Offer some pro bono/reduced fees in the public interest;

## APA Div41: Forensic Psychology Specialty Guidelines (cont)

Avoid dual relationships; Obtain informed consent with exceptions, disclose role for exams & research / scholarly products; Appraise & attempt to resolve ethics and law conflicts.

*V. CONFIDENTIALITY AND PRIVILEGE:* Be aware of / respect legal standards affecting confidentiality or privilege, inform regarding; Maintain active control in record keeping and communication; Provide access to records and meaningful explanations, consistent with relevant laws, organizational rules & ethical principles / standards of psychologists.

*VI. METHODS AND PROCEDURES:* Maintain and integrate current knowledge of scientific, professional and legal developments; Document, anticipate, make data available per relevant legal rules; Protect against undue influences from financial or other gains and actively examine rival hypotheses;

## **APA Div41: Forensic Psychology Specialty Guidelines (cont)**

Ensure legal representation before provision of services; Inform re: emergent services provided, avoid further forensic services; Seek data from other sources only with prior approval or as a consequence of court ordered examination; Minimize reliance upon hearsay, inform, seek corroborative data; Clarify origins of data; Ensure conformance to Federal Rules; Exercise prescribed cautions in preparing reports or offering testimony re: mental state claims; Avoid report or oral evidence about the individuals not directly examined.

**VII. PUBLIC AND PROFESSIONAL COMMUNICATIONS:** Ensure services, public statements, testimony promote understanding, avoid deception; Correct misuse or misrepresentations; Inform about services consistent with professional and legal standards for disclosure, data interpretation, and factual bases for conclusions.

## **APA Div41: Forensic Psychology Specialty Guidelines (cont)**

Comply with Principle 16 of the Standards for Educational & Psychological Testing re: disclosing results to a non-psychologist (i.e., test security; restricted access; inform re: qualified interpretation or scores); Ensure fairness and accuracy in presenting findings, conclusions, factual bases, etc., in professional and public statements; Preclude partisan representations; Actively disclose sources of information; Distinguish professional observations, inferences and conclusions from legal facts; Be prepared to explain relationship between expert testimony and legal issues and facts of a case.

## OBSTACLES TO ETHICAL BEHAVIOR

- ❑ Poorly Understanding, esp. in medicolegal contexts; inadequate training in Grad/Prof School
- ❑ Reluctance of Practicing Experts to Write
- ❑ "CREEPING ADVERSARIALISM"
- ❑ Financial Incentive in MC age (*continuum*)
- ❑ COMPLEXITY: Multiple Obligations
- ❑ COGNITIVE DISSONANCE

## On Violating Ethical Standards

*Kenneth Pope*

- ❑ 1. It's not unethical as long as you or others don't talk about it (or ethics)
- ❑ 2. It's not unethical as long as you don't know a law, ethical principle, or professional standard that prohibits it: specific ignorance and specific literalization.
- ❑ 3. It's not unethical as long as you can name at least five other clinicians that do the same thing.
- ❑ 4. It's not unethical as long as none of your clients has ever complained about it.
- ❑ 5. It's not unethical as long as your client wanted you to do it.
- ❑ 6. It's not unethical as long as you did it to avoid potential legal conflicts

## On Violating Ethical Standards (continued)

- ❑ 7. It's not unethical as long as you weren't really feeling well that day and thus couldn't be expected to perform up to your usual level of quality.
- ❑ 8. It's not unethical as long as a friend of yours knew someone that said an ethics committee somewhere opined that it's okay.
- ❑ 9. It's not unethical as long as you're sure that legal, ethical, and professional standards were made up by people who don't understand the hard realities of medicolegal practice.
- ❑ 11. It's not unethical as long as it results in a higher income or more prestige.
- ❑ 12. It's not unethical as long as it's more convenient than doing things another way
- ❑ 13. It's not unethical as long as no one else finds out—or if whoever might find out probably wouldn't care anyway.

## On Violating Ethical Standards (continued)

- ❑ 14. It's not unethical as long as you're observing most of the other ethical standards.
- ❑ 15. It's not unethical as long as there's no awareness of / intent to do harm.
- ❑ 16. It's not unethical as long as there is no body of universally accepted, scientific studies showing, without any doubt whatsoever, that exactly what you did was the sole cause of harm to the client.
- ❑ 17. It's not unethical as long as you don't intend to do it more than once.
- ❑ 18. It's not unethical as long as no one can prove you did it.
- ❑ 19. It's not unethical as long as you're an important or well regarded and respected person.
- ❑ 20. It's not unethical as long as you're busy. .

## P100. Patient-Physician Relationship in the Context of Work related and Independent Medical Examinations \*\*

### □ Unaltered Responsibilities and Obligations

- Despite their ties to a third party, the responsibilities of IEPs and IMEs are in some basic respects very similar to those of other physicians. Physicians in this context have the same obligations to conduct an objective medical examination, maintain patient confidentiality, and disclose potential or perceived conflicts of interest.

### □ Altered Responsibilities and Obligations

- A physician is obligated to divulge important health information to the patient which the physician discovers as a result of the examination.

□

□ *AMA: Center for Ethical and Judicial Affairs, 1999*

## NOVEL SOLUTION EFFORTS:

### EXPERT OPINION: COMPETENCY / CREDIBILITY WEIGHTING (Last Three Years)

➤ Professional Organization Memberships, Meeting Attendances and Presentations (Total N)	
➤ Professional Journal Subscriptions, Reading (Total N)	
➤ Publication Record	
➤ Talks and Presentations in Relevant Area of Expertise	
➤ Specialty Clinical Treatment Experience	

## NOVEL SOLUTION EFFORTS *(cont)*

- ➔ Science Intensive Litigation
- ➔ Court Hired Experts
- ➔ Conjoint Opposing Expert Conferences with Judge
- ➔ Utilization of Performance Criteria for
- ➔ Competence Credibility Ratings Offered to Courts
- ➔ Etc.

## Professional Expert Qualifications Checklist

### Knowledge Competence Base (APA Ethics):

	Yes /No
<input type="checkbox"/> Remains aware of general trends in the relevant neuropsychological literature and incorporates current knowledge into regular practice	
<input type="checkbox"/> Uses up to date neuropsychological tests and norms and considers important demographic characteristic of individuals in making interpretations	
<input type="checkbox"/> Appropriately acknowledges limitations in current knowledge	
<input type="checkbox"/> Seeks rigorous peer review to ensure competence	
<input type="checkbox"/> Can discuss relevant research literature accurately, without notes	

## Professional Expert Qualifications Checklist

### Knowledge Competence Base (APA Ethics):

	Yes /No
<input type="checkbox"/> Limits practice to boundaries of competence, seeking consultation as appropriate.	
<input type="checkbox"/> Is fully trained in a specialty or has earned a diplomate of a specialty board in Clinical Neuropsychology, and is qualified by experience or demonstrated competence in the subject of the case.	
<input type="checkbox"/> Is familiar with the clinical practice of the specialty or the subject matter of the case at the time of the occurrence, and has been actively involved in the clinical practice of the specialty or the subject matter of the case for three of the previous five years at the time of testimony.	

## Professional Expert Qualifications Checklist: Neuropsychology

### Professional Organizations: (A) Current Memberships (B) Current Committee Memberships

	Yes /No
<input type="checkbox"/> National Academy of Neuropsychology	
<input type="checkbox"/> International Neuropsychological Society	
<input type="checkbox"/> APA: Division 40	
<input type="checkbox"/> APA: Division 22 ( <i>secondary relevance</i> )	

## Professional Expert Qualifications Checklist: Neuropsychology

### Specialty Conference Attendances:

(A) # Attendances at Last Three Meetings of...?

(B) # Presentations at Last Three Meetings of...?

	Yes /No
<input type="checkbox"/> National Academy of Neuropsychology	
<input type="checkbox"/> International Neuropsychological Society	
<input type="checkbox"/> APA: Division 40	
<input type="checkbox"/> APA: Division 22 <i>(secondary relevance)</i>	

## Professional Expert Qualifications Checklist: Neuropsychology

### Professional Journal Familiarity:

(A) Do You Currently Subscribe to...?

(B) Have You Read "... " (Latest Issue Article in)...?

	Yes /No
<input type="checkbox"/> Journal Of Clinical & Experimental Neuropsychology	
<input type="checkbox"/> Archives of Clinical Neuropsychology	
<input type="checkbox"/> Neuropsychology Review	
<input type="checkbox"/> The Clinical Neuropsychologist	
<input type="checkbox"/> Applied Neuropsychology	
<input type="checkbox"/> Neuropsychology	
<input type="checkbox"/> Neuropsychological Rehabilitation	
<input type="checkbox"/> Journal of Forensic Neuropsychology	
<input type="checkbox"/> Journal of the International Neuropsychological Society	

## Professional Expert Qualifications Checklist

### Specialty Area Clinical Treatment Experience:

	Yes /No
<input type="checkbox"/> # Clinical Patients Personally Treated (excluding assessment; > 5 hrs) in the past 12 months	
<input type="checkbox"/> # Clinical Patients Personally Assessed (not technician; > 5 hours)	
<input type="checkbox"/>	
<input type="checkbox"/>	

## Professional Expert Qualifications Checklist: Brain Injury

### Professional Organizations: (A) Current Memberships (B) Current Committee Memberships

	Yes /No
<input type="checkbox"/> Brain Injury Association	
<input type="checkbox"/> International Brain Injury Association	
<input type="checkbox"/> State Brain Injury Association	
<input type="checkbox"/> American Psych Assoc., Div 40, 22 Only	

## Professional Expert Qualifications Checklist: Brain Injury

**Specialty Conference Attendances:**  
*(A) # Attendances at Last Three Meetings of...?*  
*(B) # Presentations at Last Two Meetings of...?*

	Yes /No
<input type="checkbox"/> Brain Injury Association	
<input type="checkbox"/> International Brain Injury Association	
<input type="checkbox"/> State Brain Injury Association	
<input type="checkbox"/> American Psych Assoc., Div 40, 22 Only	

## Professional Expert Qualifications Checklist: Brain Injury

**Professional Journal Familiarity:**  
*(A) Do You Currently Subscribe to...?*  
*(B) Have You Read "...." (Latest Issue Article in)...?*

	Yes /No
<input type="checkbox"/> Brain Injury	
<input type="checkbox"/> Journal of Head Trauma Rehabilitation	
<input type="checkbox"/> NeuroRehabilitation	
<input type="checkbox"/> Archives of Neurology	
<input type="checkbox"/> Archives of Physical Medicine and Rehabilitation	
<input type="checkbox"/> Journal Of Neurologic Rehabilitation	

## Perception Bias (magnet)

- We see what we look for. We look for what we know.  
- *Goethe*
- The theories we choose determine what we allow ourselves to see. - *Albert Einstein*
- We don't see things as they are, we see things as we are.  
- *Anais Nin*
- When we don't even believe that something is possible or that it exists, we fail to see it at all. - *Dorothy Otnow Lewis*
- For every complex problem there is an easy answer... And it is wrong. - *H. L. Menchen*
- "The tendency to organize knowledge around a belief system, and then to defend that belief system against challenge, appears to be a fundamental human characteristic...."

## Compensation, Injury and Adversarialism

### Longitudinal study of PI MVA litigants (*Evans, 1994*)

- Strongest predictors of successful outcome were
  - Inclusion of psychological services in the Tx plan
  - Receipt of immediate intervention, with return to work (RTW) treatment focus
  - RTW at reduced status or modified duties
- $\geq 6$  months: uncooperativeness and delayed bill paying of medical insurance carriers (vs. medical symptoms) was most frequently reported stressor.
- Insurance carrier bill payment very strongly predicted RTW
  - Prompt ( $\leq 30$  days): 97% had returned to work.
  - Delayed ( $> 90$  days): 4% had returned to work.

## Compensation, Injury and Adversarialism (cont)

Incidence & claim closure speed of Whiplash injury after change to no-fault in Saskatchewan, CA (Cassidy, et al, 2000)

- Claims dropped by 28%
- Time to claim settlement was cut by 54%.
- Intensity of neck pain, level of physical functioning, depressive symptoms, having attorney increased claim closure for both
- Conclusion: Compensation for pain and suffering increases frequency, duration of claims and delays recovery
- Note: No-fault system eliminated most court actions, income replacement and medical benefits were increased and medical care became universal, without barriers
  - Pre-injury anxiety was associated with delayed claim closure only under the tort system
- New Conclusion: removal of financial disincentives and medicolegal associated treatment barriers and anxiety provocation has a facilitative effect on post-injury recovery.

### Diagnostic Realities in Assessment of Impairment and Disability

Real Disorder  
(e.g., TBI, Pain)

- 1 Yes
- 2 Mixed
- 3 Indeterminate
- 4 No

4

X

Residual Functional  
Impairments

- Yes & Exaggerated
- Yes & Not Exaggerated
- No & Exaggerated
- No & Not Exaggerated

4

X

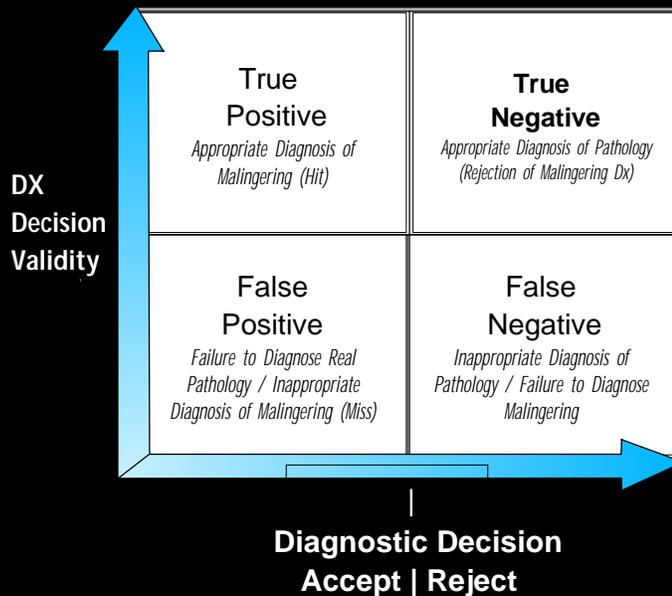
Residual Testing  
Impairments

- Yes & Not Exaggerated
- Yes & Exaggerated
- No & Exaggerated
- No & Not Exaggerated

4

= 64

## Decision Making Theory: Diagnostic Formulation of Malingering



### Considerations

- Consequences of False Positive vs. False Negative
- Cost and Availability of Treatment Resources
- Salience, Strength of Reward of Pathology Diagnosis

## Decision Making in Malingering Assessment

	Environmental Conditions	Diagnostic Conceptualization	Diagnostic Decision Result
	High vs. Low Reward for Clinical Diagnosis	Dichotomous (Black/White; Either/Or)	Less vs More frequent Diagnosis of Clinical Condition
	Limited Resources	Personal Responsibility / MedicoLegal	Less Diagnoses for Less Easy to Treat or Less Clear Cut
	Limited Resources	Medical & Medico Legal	Treat Those with Clear Organic Conditions and/or Only Organic Conditions, with Medical Tx's
	Limited Resources	Biopsychosocial	Treat Most Persons, and in a Holistic Manner
	Limited Resources (e.g, Managed Care)	Neurobehavioral Therapist / Program Competence	Treat Most Persons with Evolution of More Sophisticated, Efficient, Powerful Rehabilitation Interventions

## Recommendations for Promoting Ethics & Objectivity in Expert Testifying Witnesses

- 1. Avoid or resist attorney efforts at enticement into joining the partisan attorney-client team.
- 2. Respect role boundaries and do not mix the conflicting roles of treating doctor, expert, and trial consultant.
- 3. Spend sufficient time directly evaluating and treating both the examinee and the examinee population for whom expert testimony is given.
- 4. Avoid cutting of corners, be thorough, insist on adequate time and rely on standardized, validated, well normed and well-accepted procedures and tests. Only use specific, appropriate norms, take into account symptom base rates and consider all competing explanatory factors for symptoms.

- 6. Review all available information before arriving at opinions, always include and consider contradictory facts and evidence and never arrive at opinions which are inconsistent with the plaintiff's records, test data, and behavioral presentation.
- 7. Balance cases from plaintiff and defense attorneys and resist specialization in an adversarial legal system.
- 8. Ensure against excessively favoring the retaining side/party.
- 9. Ensure against excessive black and white findings; Recognize the limitations of scientific, medical and neuropsychological opinion, fewer findings are black or white or attributable to a single event (e.g., Ockam's Razor).
- 10. Make efforts to both guard against motivational threats to assessment validity. Always attempt to facilitate response validity and always assess response bias.

## Recommendations for Promoting Ethics & Objectivity in Expert Testifying Witnesses (*cont.*)

- 11. Routinely perform critical self examination (e.g., Sweet and Moulthrop's (1999) questions) in every medicolegal case. Keep running statistics and strive for balance in ratios relating to favorability of findings to retaining party, defense vs. plaintiff referrals and black-white vs. mixed findings.
- 12. Develop an Ethical Behavior Habit. In addition to #11, Keep ethical standards, case books and reports, and a collection of articles in a handy place for frequent review. Consult colleagues frequently about ongoing potential ethical issues. Strive for objectivity and a reputation for such.
- 13. Dispute opinion of other experts only in pursuit of objectivity, in the context of complete & accurate representation of the other expert's findings, inferences and conclusions.

## Recommendations for Promoting Ethics & Objectivity in Expert Testifying Witnesses (*cont.*)

- 14. Identify Personal Values & Biases, anticipate possible effects in medicolegal work, and monitor every case accordingly
- 15. Attempt to develop and employ formal mechanisms for monitoring objectivity, the validity of diagnostic and prognostic statements against external criteria, and receipt of objective feedback from peers.
- 16. Promote increased awareness within the forensic professions of relevant issues relating to ethics and scientific objectivity (e.g., promoting use of professional ethical standards by courts in assessing admissibility of evidence (Shuman & Greenberg, 1998).
- 17. Promote increased awareness within graduate training programs in the expert professions.
- Adapted from Martelli, Zasler, and Grayson (1999) and Blau (1992)

## Method for Addressing Ethical Violations

*(Diedan & Bush, 2002)*

- ❑ Identify the problem or dilemma.
- ❑ Identify the relevant ethics code and the relevant sections of the code.
- ❑ Identify and consider applicable laws and regulations.
- ❑ Consider the significance of the context and setting.
- ❑ Identify the obligations owed to the subject, referral source, etc, including confidentiality issues.
- ❑ Consider the role played by your beliefs and values, including personal feelings toward the colleague.
- ❑ Consider the significance of the violation.
- ❑ Consider the strength of the reliability and persuasiveness of the evidence.
- ❑ Consult written resources.

## Method for Addressing Ethical Violations *(continued)*

- ❑ Consult knowledgeable and experienced professionals or ethics committees of relevant organizations.
- ❑ Consult knowledgeable and experienced professionals or ethics committees of relevant organizations.
- ❑ Consider possible solutions to the problem, with informal resolution a first choice except in more serious situations.
- ❑ Consider the potential consequences of various actions, both positive and negative.
- ❑ Choose a course of action.
- ❑ Implement the decision at the appropriate time.
- ❑ Assess the outcome.
- ❑ Consider and implement additional/alternative courses of action as needed.

**THE**

That's all Folks!!

**END**

