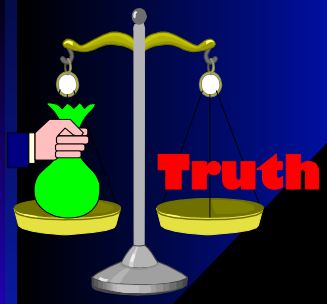
An Independent Examination of Independent Examinations:

An Independent Skinnerian Examination (ISE)?



PART II:

Possible Solutions

American Academy of Pain Management
San Antonio, *September 9, 2004*
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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*
  - Beneficience: *Patient welfare promotion*
  - Justice: *Equitable distribution of the burdens & benefits of care*

OBSTACLES TO ETHICAL BEHAVIOR

- Poor 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

ETHICAL GUIDES

- A.P.A. 2002: Ethical principles & code of conduct
- Bush (2004) NP Ethics Casebook
- A.P.A. Div41 (Psy & Law, 1991) Specialty Guidelines
- Sweet et al (2002) in Bush, Ethics in Cinical NP Book
- Martelli, B ush, Zasler (2003) IJFP Paper, Free Access
- Martelli, Zasler & Zasler, Martelli, 2002, 2001, 1999
- Binder & Thompson, 1995
- C.P.A. 2000
- AAPM&R (1992) Expert Witness White Paper
- Neurology Expert Witness Gujdes
- AMA, Council on Ethical & Judicial Affairs (1996) Code of Medical Ethics: Current Opinions with Annotations.

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*

APA Ethical Principles of Psychologists & Code of Conduct, 2002

Pinciple	
A: Beneficience & Non-malificence C: Integrity E: Respect for Peoples Rights & Dignity	B: Fidelity & Responsibility D: Justice
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

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*
  - **Beneficience**: *Patient welfare promotion*
  - **Justice**: *Equitable distribution of the burdens & benefits of care*

NOVEL SOLUTIONS *(cont.)*

Changes in Relevant Ethical Standards: 2002

New Pinciple D (**Justice**)

- Expands & focuses emphasis on individual professional responsibility & efforts to ensure our processes, procedures & services are just (i.e. not biased), equitable & fair in terms of access and benefit)
- More stringently enjoins taking active precautions to ensure that potential biases *(& limitations of competence, expertise and measures)* do not lead to or condone unjust practices.
- Applies to neuropsychologists conducting work in increasingly restrictive environments where dwindling reimbursement adds strong financial incentives for forensic work, and where these incentives inherently conflict with objectivity.

NOVEL SOLUTIONS *(cont.)*

Changes in Relevant Ethical Standards: 2002

9.02, 9.06 *(Assessment Procedures, Interpretation)*

- Tightening of procedures, Increased Accountability, Transparency
  - **More specifically call for use of reliable and valid instruments for the specific pop. (9.02b) being examined**
  - **More specifically describe strengths & limitations when these have not been established.**
  - **More specifically consider various situational, personal, cultural, other factors & characteristics of persons that might affect inferences or reduce accuracy of interpretations (9.06)**
  - **More specifically document any potential limitations, not just examiners concerns**
  - **Combines standards for forensic and clinical assessment**

NOVEL SOLUTIONS *(cont.)*

Changes in Relevant Ethical Standards: 2002

3.06 *(Conflict of Interest)*

- More specifically calls for precautions in taking on roles where personal, scientific, professional, legal, financial, or other interests or relationships could be expected to impair objectivity or expose the person to risk of harm.
- Includes clinicians dependent on insurance companies for payment for clinical treatment and neuropsychologists dependent on adverserial advocates from last good reimbursement source

GENERAL

- **Increasing emphasis on empirical methods, accountability and transparency**
- **Moves psychologists toward the need to exercise informed judgment**

NOVEL SOLUTION EFFORTS *(cont)*

- Change Environmental Contingencies:
  - Reinforce adaptation and Wellness; Remove adversarial treatment barriers and anxiety provocation; Remove financial disincentives
- Court Hired Experts
- Conjoint Opposing Expert Conferences with Judge
- Utilization of Performance Criteria for Competence Credibility Ratings Offered to Courts
- Science Intensive Litigation
- Colorado Approach
- Etc.

NOVEL SOLUTION EFFORTS *(cont)*

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

- More Valid Conclusion: removal of financial disincentives and medicolegal associated treatment barriers and anxiety provocation has a facilitative effect on post-injury recovery.

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

- **Strongest predictors of successful outcome were**
  - Receipt of immediate intervention, with return to work (RTW) treatment focus
  - Inclusion of psychological services in the Tx plan
  - RTW at reduced status or modified duties
  - Prompt Medical Bill Payments

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	
APA Standards for Competence	

Professional Expert Qualifications Checklist

Knowledge Competence Base (APA Ethics):

	Yes /No
Limits practice to boundaries of competence, seeking consultation as appropriate.	
Is fully trained in a specialty or has earned a diplomate of a specialty board in Pain Assessment/Mangement, and is qualified by experience or demonstrated competence in the subject of the case.	
Is familiar with the clinical practice of the specialty or the subject matter of the case at the time fo the occurence, 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

Knowledge Competence Base (APA Ethics):

	Yes /No
Remains aware of general trends in the relevant pain literature and incorporates current knowledge into regular practice	
Uses up to date pain assessment measures and norms and considers important demographic characteristic of individuals in making interpretations	
Appropriately acknowledges limitations in current knowledge	
Seeks rigorous peer review to ensure competence	
Can discuss relevant research literature accurately, without notes	

Professional Expert Qualifications Checklist

Knowledge Competence Base (APA Ethics):

	Yes /No
Limits practice to boundaries of competence, seeking consultation as appropriate.	
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.	
Is familiar with the clinical practice of the specialty or the subject matter of the case at the time fo the occurence, 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: PAIN

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

	Yes /No
American Acad. of Pain Management	
American Pain Society / Canadian Pain Society	
International Assoc. for the Study of Pain	
American Academy of Pain Medicine	
Int., Nat.. Regional or State Assoc's with Primary Pain...	

Professional Expert Qualifications Checklist: PAIN

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

	Yes /No
American Academy of Pain Management	
American Pain Society / Canadian Pain Society	
Int. Assoc. for the Study of Pain	
American Academy of Pain Medicine	
Int., Nat.. Regional or State Assoc's with Primary Pain...	

Professional Expert: PAIN

Professional Journal Familiarity:

(A) Do You Currently Subscribe to...?
(B) Have You Read "...." (Latest Issue Article in)...?

	Yes /No
Pain	
American J of Pain Management	
Clinical Journal of Pain	
American Journal of Pain	
Cephalgia / Headache	
Current Review of Pain	
Crano: J of Craniomandibular Practice	
Other Primary Pain Related Journal	
Pain Clinic, Pain Practitioner, Other Pain Newsletter (.5 pt each)	

Professional Expert Qualifications Checklist

Pain Related Publication Record

	Yes /No
# Publications in recognized specialty journals, books in the last three years	
# Publications in peer reviewed journals in specialty area in the last three years	
# Publications in non-peer reviewed journals, Newletters in specialty area in the last three years	
Recognized quality of the work	

Professional Expert Qualifications Checklist

Pain Related Presentations & Talks

	%
# Lectures in specialty area in last three years	
National or international recognition of organizations where lectures were offered	
# of clinical, scientific, academic and administrative positions held	
Manner of gaining appointments in positions held	

Recommendations for Promoting Ethics & Objectivity in Expert Tesifying 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.

(Cont)

- 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 Tesifying Witnesses *(cont.)*

- 11. Routinely perform critical self examination (e.g., Sweet and Moulthroup'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 freequently 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 Tesifying 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.

Medicolegal Aspects of the IME:
Adversarial Exam and Critical Responses*

Plaintiff Atty Arguments. ***Witness Would Ensure:***

- Justice: Exam not conducted "in secret" (ind. constitutional right to open court process)
- Justice: For insurance company required exam with selected, highly paid expert accountable only to them
- No inquiries into illegitimate scope matters
- Procedure, tests, & results reported accurately
- Exam doesn't become taking of a deposition re: facts & issues
- IME examiner's attitude, tone, behavior are professional
- Minimally invasive, as possible, consistent with case nature
- Monitor what questions asked, not, tests, not, etc.
- Reassure client re: procedures/ testing to prevent misinterpretation

**Why would anyone want to invade our assessments...*
or sit for 8 hours of testing?

BOTTOM LINE

Work Hard & Make Active Efforts to Ensure:

- Avoidance of Harm; Promote Benefit
- *Objectivity: Maintain Vigilant Guard, Critically Evaluate and Actively, Systematically, Tranparently Address *Possible* Bias/Limitations/Threats to:
  - Competence & Expertise
  - Measures & Procedures
  - Interpretations

* cf Research Reports!

CONCLUSION

Work Hard & Make Active Efforts to:

- Avoid Harm; Promote Benefit
- Be Competent *(Critically Evaluate, Hone)*
- Be Objective *(Actively, Vigilantly Guard Against Potential Sources of Bias)*
- Be Transparent in Addressing and Reporting Potential Limitations in:
  - Competence, Expertise
  - Measures & Procedures
  - Interpretations

VIA ---> ESSENTIAL BIAS BUSTING TOOLS

- Sytemtatic, Ongoing Use of:

1. De-Biasing Strategies
2. Objectivity Ratios
   - A. Referral Favorability
   - B. Plaintiff/Defense; etc.
3. Competency Criteria
4. Program Evaluation / Continuous Quality Improvement (CQI)
5. Do Independent Skinnerian Exam on Self (Where are your pellets?)
6. Objective Lit. Review Habit (Skilled Disconfirmatory Searches)
7. Peer Review from those with Disparate Opinions
8. Transparency
9. Write Assessment reports like Research Reports (limitations section)
10. Develop Reliable, Efficient Resources
    - ★ KSPope.com; Villamartelli.com
11. Conduct Education re: Ethical Norms
12. Guides for Responding to Ethical Threats

TOOLS: Selected References

1. De-Biasing Strategies:
   - Sweet JJ & Moulthrop MA (1998). Self-examination questions as a means of identifying bias in adversarial assessments. Journal of Forensic Neuropsychology, 1, 73-88
2. Objectivity Ratios:
   - Brodsky, S.L. (1991). Testifying in court: Guidelines and maxims for the expert witness. Washington, D.C.: American Psychological Association.
   - Martelli, M.F., Bush, S.S. and Zasler, N.D. (2003). Identifying and Avoiding Ethical Misconduct in Medicolegal Contexts. International Journal of Forensic Psychology, 1, 1, 1-17. Online; link at http://villamartelli.com
3. Competency Criteria
   - **See http://villamartelli.com (Neuropsychology, Brain Injury, Chronic Pain, General**
4. Program Evaluation / Cont. Quality Improvement (CQI):
   - Martelli, M.F., Zasler, N.D., & LeFever, F. (2000). Preliminary consumer guidelines for choosing a well suited neuropsychologist for assessment and rehabilitation of accuired brain injury. Brain Injury Source, 4 (4), 36-39. Available online at http://villamartelli.com
5. Do Independent Skinnerian Exam on Self (Where are your pellets?)
   - Martelli, M.F. (2004). Ethics for Brain Injury Rehabilitation in Medicolegal Situations: An Independent Skinnerian Exam. Presentation at the New York Academy of TBI, New York, NY. Slides available online at http://villamartelli.com

TOOL REFERENCES (cont.)

6. **Objective Literature Review Habit**
   - Including efforts to identify and consider all, including disconfirmatory, evidence
7. **Peer Review: Disparate and/or Critical Opinions**
8. **Transparency**
   - A.P.A. 2002: Ethical principles & code of conduct; Bush, 2004: NP Ethics Casebook
   - Martelli, MF (in press). Ethical issues in the neuropsychology of pain, part 1. Bush (Ed.), Casebook of ethical challenges in Neuropsychology.
9. **Cf Research Reports (limitations section)**
10. **Develop Reliable, Efficient Resources**
    - **http://KSPope.com**
    - **http://Villamartelli.com**
11. **Conduct Education re: Ethical Norms**
    - Shuman, D.W., & Greenberg, S.A. (1998). The role of ethical norms in the admissability of expert testimony. The Judge's Journal, winter issue
    - Martelli, M.F., Bush, S.S. and Zasler, N.D. (2003). Identifying and Avoiding Ethical Misconduct in Medicolegal Contexts. International Journal of Forensic Psychology, 1, 1, 1-17. Available Online at http://villamartelli.com
12. **Guides for Responding to Ethical Threats**
    - Bush, S. & Drexler, M. (Eds.). (2002). Ethical issues in clinical neuropsychology. Lisse, NL: Swets & Zeitlinger.
    - Martelli et al (2003). Identifying and Avoiding Ethical Misconduct... International Journal of Forensic Psychology, 1, 1, 1-17. Available online at http://villamartelli.com

THE END

That's all Folks!!

APPENDIX

- Slides A1 - A3:
  - On Violating Ethical Standards (KSPope.com)
- Slides A4 - A7
  - Professional Qualifications Checklists
- Slide A8
  - Diagnostic Realities in Assessment
- Slide A9
  - Decision Making (in Malingering Assessmenet)
- Slide A10
  - Debiasing Questions (Sweet & Moultrhop, 1999)
- Slide A11
  - Downloadable Resources

On Violating Ethical Standards

Kenneth Pope, PhD: KSPope.com

- 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 medicolegalpractice.
- 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. .

Professional Expert Qualifications Checklist

Specialty Area Clinical Treatment Experience:

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

Professional Expert Qualifications Checklist: Brain Injury

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

	Yes /No
Brain Injury Association	
International Brain Injury Assocation	
State Brain Injury Assocation	
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
Brain Injury Association	
International Brain Injury Assocation	
State Brain Injury Assocation	
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
Brain Injury	
Journal of Head Trauma Rehabilitation	
NeuroRehabilitation	
Archives of Neurology	
Archives of Physical Medicine and Rehabilitation	
Journal Of Neurologic Rehabilitation	

Downloadable References

- Martelli, M.F., Zasler, N.D. & LeFever, F.F. (2000) Consumer Guidelines for Choosing a Well Suited Neuropsychologist. Brain Injury Source, 4, 4, 36-39. http://villamartelli.com/PsychConsumGuides2001.pdf
- BOOK - ND Zasler and MF Martelli (Eds): Functional Medical Disorders in Rehabilitation, State of the Art Reviews in Physical Medicine and Rehabilitation. Phila.: Hanley and Belfus. http://villamartelli.com/STARSAbs&ChapLnks.htm
  - Martelli, MF and Zasler, ND (2002). Appendix: Survey of indicators suggestive of non-organic presentations and somatic, psychological and cognitive response biases. http://villamartelli.com/STARSAbs&ChapLnks.htm
  - Martelli, MF and Zasler, ND (2002). Useful psychological instruments for assessing persons with functional medical disorders. http://villamartelli.com/STARSAbs&ChapLnks.htm
  - Roper, BL and Martelli, MF (2002). Providing useful diagnostic feedback to patients with functional medical disorders and making referrals for psychological treatment. http://villamartelli.com/STARSAbs&ChapLnks.htm
  - Other Chapters...
- Martelli, M.F., Zasler, N.D. & Bender, M.C. (2004). Psychological, neuropsychological and medical considerations in the assessment and management of pain. Jl Head Trauma Rehab, 19, 1, 10-28. http://villamartelli.com/JHTR191MFMZBNPainBrain.pdf
- Masquerades of Brain Injury Article Series (j Controv Med Claims): Part I to V. http://villamartelli.com/#MBI
  - Martelli, M.F., Zasler, N.D., Nicholson, K. and Hart, R.P. (2001). Masquerades of Brain Injury. Part I: Chronic pain and traumatic brain injury. Journal of Controversial Medical Claims, 8, 2, 1-8.
  - Martelli, M.F., Zasler, N.D., Hart, R.P., Nicholson, K., and Heilbronner, R.L. (2001). Masquerades of Brain Injury. Part II: Response Bias in Medicolegal Examinees and Examiners. JCMC, 8, 3, 13-23.
  - Martelli, M.F., Zasler, N.D., Nicholson, K., Hart, R.P. and Heilbronner, R.L. (2002). Masquerades of Brain Injury. Part III: Critical Examination of Symptom Validity Testing and Diagnostic Realities in Assessment. The Journal of Controversial Medical Claims, 9, 2, 19-21.
  - Heilbronner, R.L., Martelli, M.F., Nicholson, K. & Zasler, N.D. (2002). Masquerades of Brain Injury. Part IV: Functional Disorders. The Journal of Controversial Medical Claims, 9, 3, 1-7.
  - Martelli, M.F., Bender, M.C., Nicholson, K., and Zasler, N.D. (2002). Masquerades of Brain Injury. Part V: Pre-injury Factors Affecting Disability Following Traumatic Brain Injury. JCMC, 9, 4, 1-7.
- Martelli, Siegal, Zasler (2002). Grand Rounds: Frontal Lobe Syndromes Following Neuro Insult http://host69.ipowerweb.com/~villamar/NANBullFrontal.pdf
- Zasler, N.D., Martelli, M.F. and Bender, M.C. (2003). Assessing Impairment in Traumatic Brain Injury. The AMA Guides Newsletter, Sept/Oct, 1-9. http://villamartelli.com/AMA_Guides_TBI_Eval_Sep-Oct2003

Forensic Survival Rules

Ted Blau, PhD (circa 1994)

- ASSUME ALL MVA PATIENTS WILL LITIGATE
- BE OBJECTIVE, UNBIASED
  - Resist Pressures to Become a Member of the Lawyer/Client Team
  - Define Role, Do Not Mix, Set Limits, Be Assertive, and Rely on "Just the Facts"
    - Treating Doctor: describe everyday treatment procedures
    - Expert : obtain extraordinary information, research, instruct
    - Trial Consultant: impeach, cast doubt on opposing expert
- INSIST ON RIGOROUS SEARCH FOR ALL RELEVANT RECORDS
  - Hospital, Accident, Police, School, Medical, Armed Forces or V.A., etc. , Testing Records, S.S.I., Job Applicationss/P.E.'s, etc.
  - See What's There and Adjust Opinion Accordingly!!

Forensic Survival Rules

Ted Blau, PhD (circa 1994) (continued)

- BEWARE OF I.M.E. REFERRALS TO "DEFENSE" OR "PLAINTIFF" DOCTOR
- BEWARE OF BECOMING A "DEFENSE" OR "PLAINTIFF" DOCTOR - Establish a Professional Reputation as Competent, Fair
- INSIST ON ADEQUATE PREPARATION TIME
- CUT NO CORNERS
- Be thorough, use only standardized, validated, well-normed, well-accepted, comprehensive test batteries
- ALWAYS ASSESS MALINGERING - Always Attempt to Safeguard Against
- REPORT BASE RATES - How is the Patient Different or Not Different?

Forensic Survival Rules

Ted Blau, PhD (circa 1994) (continued)

- BEWARE OF LENGTHY, PROTRACTED DEPOSITIONS & "DON'T YOU AGREE...?", "ISN'T IT TRUE...?" TYPES OF QUESTIONS
- ALWAYS ACCEPT RIGHT TO READ & SIGN DEPOSITION TESTIMONY - Always Xerox, Review, and Study Before Court
- BE A "MECUS CUREi" IN ALL CASES - friend of the court
- SPEND LOTS OF TIME WITH THE PATIENT
- RECOGNIZE LIMITATIONS OF NEUROPSYCHOLOGICAL DATA, OPINIONS, ETC.
- RECOGNIZE THAT IN SCIENCE AND MEDICINE, FINAL RESULTS CAN RARELY BE ATTRIBUTED TO A SINGLE PHENOMENON
- PUBLISH AND JOIN APPROPRIATE ORGANIZATIONS
- DON'T BE ADVERSARIAL
- BE REASONABLE WITH WHAT YOU CHARGE

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen

- I've reached an explicit written agreement with the attorney or the court on the specific purpose and scope of the testing.
- I have the relevant education, training, and experience to conduct a psychological assessment involving these issues.
- I'm familiar with the current research studies and other relevant literature that address these issues.
- There are no conflicts of interest or other factors that would undermine the fairness and validity of this assessment.
- The tests and other psychological instruments or approaches selected for this assessment have shown adequate validity and reliability for these issues.
- The tests and other psychological instruments or approaches selected for this assessment are appropriate for a person from this population and with these demographic characteristics.

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen (continued)

- I have the relevant education, training, and experience to conduct a psychological assessment using these tests, instruments, or approaches.
- I have an up-to-date knowledge of the research concerning these tests, instruments, or approaches, including awareness of reliability and validity data and the demonstrated ability to identify efforts to "fake good" or to malinger.
- I've reached an explicit written agreement with the attorney or court on deadlines.
- I've reached an explicit written agreement with the attorney or court on fees (see Appendix A for sample agreement).

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen (continued)

- I've reached an explicit written agreement with the attorney or court on the nature and form in which the assessment will be reported (i.e., written report, deposition, trial testimony), including how, if at all, feedback on the assessment will be provided to the client.
- I've reached an explicit agreement with the attorney or court on any relevant issues of privilege, confidentiality, and privacy, including any potential mandated reports or disclosures.
- I've reached an explicit written agreement with the attorney or court on who (e.g., the expert witness, the attorney, the client, or someone else) will be responsible for obtaining additional documents or information (e.g., reports of previous assessments, assessment reports prepared by other expert witnesses in the case).

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen (continued)

- I've informed the client about the assessment and obtained appropriate informed consent (see Appendix B for a sample form).
- I've determined whether there are any issues regarding vision, hearing, mobility, etc., that need to be addressed in the assessment and/or report.
- I've determined whether there are any language (e.g., familiarity with English, reading difficulty) or cultural issues that need to be addressed in the assessment and/or report.
- I've determined whether there are any acute or chronic physical illnesses, medications, disorders, or disabilities that need to be addressed in the assessment and/or report.
- I've determined whether there are any other factors that may affect the validity of the assessment or that may require special attention.

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen (continued)

- I've ensured an adequately monitored environment for the assessment (e.g., the client had a quiet room -- free from conversation with and distraction by other people -- in which to complete the assessment; client did not take an instrument like the MMPI-2 home or elsewhere to fill out).
- If the assessment included any instruments that needed to be scored, I've checked for any scoring inaccuracies.
- If I've used a computerized interpretive report, I've evaluated each hypothesis set forth to determine whether there is evidence that it is basically accurate, basically inaccurate, or nonapplicable (completely inaccurate).
- In any oral or written report, including deposition or courtroom testimony, I've explicitly noted any factors that may have influenced the validity of this assessment.

Forensic Assessment Checklist

K.S.Pope , J.Butcher, J.Steelen (continued)

- Throughout this assessment, I've tried to set aside preconceptions and avoid premature cognitive commitment, looking carefully for data that don't fit my emerging hypotheses and for alternative explanations for the data.
- I've reviewed the legislation and case law in the relevant jurisdiction, APA's "Record Keeping Guidelines" (please follow this link for the Record Keeping Guidelines and other practice guidelines), and other relevant documents to ensure that I maintain adequate documentation of this assessment as long as required, and that I provide adequate security for the documentation.

Debiasing Self-examination Questions

Sweet and Moulthrop (1999)- **Exams**:

- Accepting or seeking especially unbalanced ratios of plaintiff and defense work
- Very high ratio of conclusions favorable to referral side
- Serving as advocate (vs. Independent expert)
- Forming opinion prior to complete compilation and consideration of available facts
- Taking different positions in similar cases given retention by different sides
- Applying different brain dysfunction decision-rules for different referral sources
- Reaching a diagnostic conclusion at a much higher (or lower) base rate than colleagues or the literature?
- Altering initial written opinion for deposition or trial testimony
- Allowing emotional response to a case alter objectivity

Debiasing Self-examination Questions

Sweet and Moulthrop (1999) - **Reports**:

- Statements and conclusions that would be disagreed with by a panel of competent experts
- Statements and conclusions that would be disagreed with the mainstream literature
- Conclusions and statements that cannolt be easily defended
- Neglecting facts or evidence contradictory to statements and conclusions
- Decision making conducted differently for adversarial and non-adversarial cases
- Not adequately considering collateral information
- Interpretive statements not warranted by each test's psychometric characteristics
- Use of exaggerated or dramatic descriptors