

# Psychological Fitness-for-Duty Evaluation Guidelines

Ratified by the IACP Police Psychological Services Section  
Philadelphia, Pennsylvania, 2013

## 1. Purpose

- 1.1 The IACP Police Psychological Services Section (PPSS) developed these guidelines to educate and inform the public safety agencies that request fitness-for-duty evaluations (FFDEs) and the practice of examiners who perform them.
- 1.2 These guidelines are most effectively used through collaboration between examiners and public safety agencies. It is desirable that these guidelines be reviewed by both the referring agency and the examiner and that any conflicts between an agency's or examiner's policies or practices and these guidelines be discussed and the rationale for action contrary to the guidelines be documented before commencing the FFDE.

## 2. Limitations

- 2.1 The term "guidelines" refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for examiners. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and facilitate a high level of practice by examiners. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of examiners.
- 2.2 These guidelines are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority not by the guidelines. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of an examiner practicing in a manner consistent or inconsistent with these guidelines.
- 2.3 These guidelines are not intended to establish a rigid standard of practice for FFDEs. Instead, they are intended to reflect the commonly accepted practices of the PPSS members and the agencies they serve.
- 2.4 Each of the guidelines may not apply in a specific case or in all situations. The decision as to what is or is not done in a particular instance is ultimately the responsibility of the agency and examiner.
- 2.5 These guidelines are written to apply to agencies within the jurisdiction of the United States and, as such, may require modification for use by agencies in other countries.

### **3. Definition**

- 3.1 A psychological FFDE is a formal, specialized examination of an incumbent employee that results from (1) objective evidence that the employee may be unable to safely or effectively perform a defined job and (2) a reasonable basis for believing that the cause may be attributable to a psychological condition or impairment. The central purpose of an FFDE is to determine whether the employee is able to safely and effectively perform his or her essential job functions.

### **4. Threshold Considerations**

- 4.1 Referring an employee for an FFDE is indicated whenever there is an objective and reasonable basis for believing that the employee may be unable to safely and/or effectively perform his or her duties due to a psychological condition or impairment. An objective basis is one that is not merely speculative but derives from direct observation, credible third-party report, or other reliable evidence.
- 4.2 When deciding whether or not to conduct an FFDE, both the agency and examiner should take into account its potential usefulness and appropriateness given the specific circumstances, and the agency should consider whether other remedies (e.g., education, training, discipline, physical FFDE) might be more appropriate or useful instead of, or in addition to, a psychological FFDE.
- 4.3 In all consultations, the examiner strives to remain impartial and objective and to avoid undue influences by any of the parties involved in the case.
- 4.4 In general, mental health professionals refrain from rendering fitness-for-duty opinions when they are not conducting an FFDE, such as when providing debriefings in the context of an officer-involved shooting or similar services in other situations when return to duty is at issue.

### **5. Examiner Qualifications**

- 5.1 In light of the nature of these evaluations and the potential consequences to the agency, the examinee, and the public, it is important for examiners to perform FFDEs with maximum attention to the relevant legal, ethical, and practice standards. Such standards include, but are not limited to, the American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct. Examiners should also consider and be guided by statutory and case law applicable to the employing agency's jurisdiction. Consequently, it is recommended that these evaluations be conducted only by a qualified mental health professional. At a minimum, it is recommended that examiners:
- 5.1.1 be licensed psychologists or psychiatrists with education, training, and experience in the diagnostic evaluation of mental and emotional disorders;
- 5.1.2 be competent in the evaluation of law enforcement personnel;

- 5.1.3 be familiar with the essential job functions of the employee being evaluated and the literature pertinent to FFDEs, especially that which is related to police psychology;
  - 5.1.4 be familiar with, and act in accordance with, relevant state and federal statutes and case law, as well as other legal requirements related to employment and personnel practices (e.g., disability, privacy, third-party liability);
  - 5.1.5 be familiar with, and be guided by, other applicable professional guidelines, including, but not limited to, the Specialty Guidelines for Forensic Psychology;
  - 5.1.6 satisfy any other minimum requirements imposed by local jurisdiction or law;
  - 5.1.7 recognize and make ongoing efforts to maintain and develop their areas of competence based on their education, training, supervised experience, consultation, study, and professional experience; and
  - 5.1.8 seek appropriate consultation, supervision, and/or specialized knowledge to address pertinent issues outside their areas of competence that may arise during the course of an FFDE.
- 5.2 When an FFDE is known to be in the context of litigation, arbitration, or another adjudicative process, the examiner should be prepared by training and experience to qualify as an expert in any related adjudicative proceeding.

## **6. Multiple Relationships and Conflicts of Interest**

- 6.1 Examiners should decline to accept an FFDE referral when personal, professional, legal, financial, or other competing interests or relationships could reasonably be expected to:
  - 6.1.1 impair their objectivity, competence, or effectiveness in performing their functions; or
  - 6.1.2 expose the person or agency with whom the professional relationship exists to harm or exploitation (e.g., conducting an FFDE on an employee who had previously been in counseling or therapy with the examiner, evaluating an individual with whom there has been a business or significant social relationship); or
  - 6.1.3 pose potential conflicts of interest related to recommendations or the provision of services following the evaluation (e.g., referring an examinee to oneself for subsequent treatment).
- 6.2 If such conflicts are unavoidable or deemed to be of minimal impact, the examiner should disclose the potential conflicts to all affected parties and obtain their informed consent to proceed with the evaluation. It is advisable that the disclosure by the examiner and consent by all parties be appropriately documented.

## **7. Referral Process**

- 7.1 It is desirable that employers have FFDE policies and procedures that define such matters as circumstances that would give rise to an FFDE referral, mechanisms of referral and examiner selection, any applicable report restrictions, sharing results with the examinee, and other related matters.
- 7.2 It is advisable for the agency and examiner to consult before an FFDE commences in order to ensure that an FFDE is indicated in a particular case and that it is consistent with the examiner's training, experience, and capacity for objectivity.
- 7.3 It is recommended that the employer's referral to the examiner include a description of the objective evidence giving rise to concerns about the employee's fitness for duty and any particular questions that the employer wishes the examiner to address. In most circumstances, the referral, and the basis for it, should be documented in writing, either by the agency or the examiner.
- 7.4 In the course of conducting the FFDE, it is usually necessary for the examiner to receive background and collateral information regarding the employee's past and recent performance, conduct, and functioning. The information may include, but is not limited to, job class specifications and/or job description, performance evaluations, previous remediation efforts, commendations, testimonials, internal affairs investigations, formal citizen/public complaints, use-of-force incidents, reports related to officer-involved shootings, civil claims, disciplinary actions, incident reports of any triggering events, medical records, prior psychological evaluations, and other supporting or relevant documentation related to the employee's psychological fitness for duty. In some cases, an examiner may ask the examinee to provide relevant medical or mental health treatment records and other data for the examiner to consider. It is important that all collected information be clearly related to job performance issues and/or the suspected job-impairing mental condition. Where possible and relevant, it may prove helpful to gather collateral information and data from other collateral sources.
- 7.5 When some portion of the information requested by an examiner is unavailable or is withheld, the examiner must judge the extent to which the absence of such information may limit the reliability or validity of his or her findings and conclusions before deciding to proceed. If the examiner proceeds with the examination, it is recommended that the subsequent report include a discussion of any such limitations judged to exist.

## **8. Informed Consent and Authorization to Release of Information**

- 8.1. An FFDE requires the informed consent of the examinee and the employer to participate in the examination. At a minimum, informed consent should include the following:
  - 8.1.1. a description of the nature and scope of the evaluation;

- 8.1.2. the limits of confidentiality, including any information that may be disclosed to the employer without the examinee's authorization;
  - 8.1.3. the party or parties who will receive the FFDE report of findings, and whether the examinee will receive a report or explanation of findings;
  - 8.1.4. the potential outcomes and probable uses of the examination, including treatment recommendations, if applicable; and
  - 8.1.5. other provisions consistent with legal and ethical standards for mental health evaluation conducted at the request of third parties
- 8.2 As part of the informed consent process, the examiner identifies the client(s) and communicates this to the examinee at the outset of the evaluation. Nevertheless, the examiner owes an ethical duty to both the referring agency and the examinee to be fair, impartial, competent, and objective and to honor the parties' respective legal rights and interests. Other legal duties also may be owed to the examinee or agency as a result of statutory or case law unique to an employer's and/or examiner's jurisdiction.
- 8.3 In addition to obtaining informed consent, it is recommended that the examiner obtain written authorization from the employee to release the examiner's findings and opinions to the employer. If such authorization is denied, or if it is withdrawn once the examination commences, the examiner should be aware of any legal restrictions in the information that may be disclosed to the employer without valid authorization.

## **9. Evaluation Process**

- 9.1 Depending on the referral question and the examiner's clinical judgment, an FFDE examiner strives to utilize multiple methods and data sources in order to optimize the accuracy of findings. Examiners integrate the various data sources, assigning them relative weight according to their known reliability and validity. The range of methods and data sources used by an FFDE examiner frequently include:
- 9.1.1. a review of the relevant background and collateral information described in Guideline 7.4;
  - 9.1.2. relevant psychological testing using assessment instruments and norms (e.g., personality, psychopathology, cognitive, specialized) appropriate to the referral question(s) and with validity and reliability that have been established for the current use. When such validity and reliability have not been established, the examiner should make known the strengths and weaknesses of that test or method;
  - 9.1.3. a comprehensive clinical interview and mental status examination;
  - 9.1.4. collateral interviews with relevant third parties if deemed necessary by the examiner; and

- 9.1.5. referral to, and/or consultation with, a specialist if deemed necessary by the examiner.
- 9.2 Prior to conducting collateral interviews of third parties, care should be taken to obtain informed consent from the employer, the examinee, or from the third party, as appropriate. This should include, at a minimum, an explanation of the purpose of the interview, how the information will be used, and any limits to confidentiality.

## 10. Report and Recommendations

- 10.1 Customarily, the examiner will provide a written report to the client agency that contains a description of the rationale for the FFDE, the methods employed, and whenever possible, a clearly articulated opinion that the examinee is presently fit or unfit for unrestricted duty.
- 10.1.1. The content of the report should be guided by the referral question(s), the employing agency's written policies and procedures, the applicable terms of any labor agreement, relevant law, the terms of informed consent, the employee's authorization.
- 10.1.2. Because FFDEs may become part of an adjudicative process, examiners strive to maintain detailed records that allow scrutiny of their work by others.
- 10.1.3. Findings and report should be presented in ways that promote understanding. Examiners strive to present their conclusions in a fair, nonpartisan, and thorough manner.
- 10.1.4. FFDE examiners consider and seek to make known that evaluation results can be affected by factors unique to, or differentially present in, FFDE contexts including response style, voluntariness of participations, and situational stress associated with involvement in labor and/or legal matters.
- 10.2 When an examinee is found unfit for unrestricted duty, it is advisable that the report contains, at a minimum, a description of the employee's functional impairments or job relevant limitations unless prohibited by law, agency policy, labor agreement, terms of the employee's disclosure authorization, or other considerations.
- 10.3 It is recognized that some examiners may be asked to provide opinions regarding necessary work restrictions, accommodations, interventions, or causation. Whether or not a recommended restriction or accommodation is reasonable for the specific case and agency is a determination to be made by the employer, not the examiner.
- 10.4 The examiner's findings and opinions are based on data available at the time of the examination. If additional relevant information is obtained after completion of the FFDE or it is determined that the original evaluation was based on inaccurate information, the employer may request that the examiner reconsider his or her conclusions in light of the additional information. Reconsideration or reevaluation also may be indicated in

circumstances in which an employee, previously deemed unfit for duty, subsequently provides information suggesting his or her fitness has been restored.

10.5 Some agencies may find differences of opinion between or among the examiner and other health care professionals. In such cases, it is advisable that the employer consider:

10.5.1. any differences in the professionals' areas of expertise and knowledge of the employee's job and work environment;

10.5.2. the objective basis for each opinion; and

10.5.3. whether the opinion is contradicted by information known to or observed by the employer.

10.6. Agencies are encouraged to handle FFDE reports in conformance with legal standards governing an employer's treatment of employee medical records.

## **11. Technological Considerations**

11.1 For examiners who make use of electronic technology during the FFDE process, the examiner takes steps to ensure that relevant authorizations and safeguards are in place, which at a minimum should include the following:

11.1.1 informed consent is obtained from the examinee prior to audio taping or video recording the examination process, or before initiating any form of telepsychology service from a remote location;

11.1.2 utilization of video conference technology or telepsychology for conducting interviews or evaluations is confidential and secure, and the use of such technology is used in accordance with state law and/or practice standards established by local licensing boards; and,

11.1.3 all electronic reports and materials are sufficiently encrypted and password-protected to ensure confidentiality of transmitted or stored material, and are in accordance with the ethical guidelines associated with the state(s) in which the evaluation is being conducted.

## **12. Third-Party Observers and/or Recording Devices**

12.1 Examiners consider the ethical, clinical, scientific, and legal issues when contemplating the presence of third-party observers and/or recording devices in an FFDE.

## Endnotes

- 2.1 American Psychological Association. (2002). Criteria for practice guideline development and evaluation. *American Psychologist*, 57, 1048–1051. (p. 149, Section 1.2 Guidelines Versus Standards).
- 3.1. The ADA (Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*) requires that, when making a disability-related inquiry or conducting a medical examination of an *incumbent employee*, the employer must meet a fact-specific, individualized threshold; namely, that the questions or examination be “job-related and consistent with business necessity” (42 U.S.C. §12112(d)(4)(A); 29 C.F.R. §1630.14(c)). In general, the ADA regards this threshold as having been met when an employer “has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a *medical condition*; or (2) an employee will pose a direct threat due to a *medical condition*” (EEOC, 2000, Question 5, p. 7, emphasis added).

A psychological evaluation constitutes a “disability-related inquiry” when it contains one or more questions likely to elicit information about a disability; see EEOC, 1995, p. 3) or constitutes a “medical examination” when it incorporates a procedure or test that seeks information about an individual’s physical or mental impairments or health; see EEOC, 1995, p. 11).

*Yin v. California* (9<sup>th</sup> Cir. 1996), where the court held that the purpose of a fitness-for-duty evaluation “is not to determine the degree of disability the employee has suffered, but rather as to whether *illness or injuries* sustained restrict the employee from performing the full range of his/her normal work assignment” (at Footnote 17, emphasis added).

EEOC (1995). *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations*, Compliance Manual, Volume II, Section 902, No. 915.002. Washington, DC: Equal Employment Opportunity Commission.

EEOC (2000). *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act*, Compliance Manual, Volume II, Section 902, No. 915.002. Washington, DC: Equal Employment Opportunity Commission.

- 4.1 Objective evidence is reliable information, either directly observed or provided by a credible third party, that an employee may have or has a medical condition that will interfere with his ability to perform essential job functions or will result in direct threat. Where the employer forms such a belief, its disability-related inquiries and medical examinations are job-related and consistent with business necessity. EEOC (2000). *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act*, Compliance Manual, Volume II, Section 902, No. 915.002. Washington, DC: Equal Employment Opportunity Commission.
- 4.3 *Sullivan v. River Valley S.D.*, 9 AD 1711 (6<sup>th</sup> Cir. 1999), “Though we need not decide today whether advice from an outside health professional is always necessary, we note that the district’s obtaining advice that further examination was needed to determine Sullivan’s fitness to work



buttresses the district's claim that it had reason to believe Sullivan could not perform some essential aspects of his job. This court has upheld requiring mental and physical exams as a precondition to returning to work. See *Pesterfield v. TVA*, 941 F.2d 437-38 (6th Cir. 1991).”

- 5.1 *People v. Hawthorne*, 203 Mich. 15, 291 N.W. 205 (1940). “This case established that professionals should be qualified as experts based on their knowledge of the specialized materials matters relevant to a case, not on the basis of their degree” (Heilbrun, Grisso & Goldstein, 2009). This case overruled an earlier lower court's decision to disallow a psychologist's testimony.

*Jenkins v. United States*, 307 F.2d 637 (D.C. Cir. 1962). “In Jenkins, the court ruled that psychologists, despite their lack of medical degree, could offer opinions as expert witnesses concerning the nature and existence of mental disorders, as long as they could demonstrate that they had training, knowledge, and experience about those matters” (Heilbrun, K., Grisso, T., & Goldstein, A. (2009). *Foundations of forensic mental health assessment*. New York: Oxford University Press.

American Psychological Association (2002). Ethical Principles of Psychologists and Code of Conduct. *American Psychologist*, 57, 1060-1073.5.1.5.

American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68, 7-19.

FFD evaluations should be conducted by licensed psychologists with specialized knowledge, training and skill (Corey & Borum, 2013).

Corey, D.M. & Borum R. (2013). Forensic Assessment of High-Risk Occupations. In Otto R. K., & Weiner, I.B. *Handbook of Psychology, Second Edition, Volume 11, Forensic Psychology*. New Jersey: Wiley

- 5.1.7. Maintenance of competence is a professional standard and particularly important given the accelerating profusions of specialty knowledge and the corollary diminishing durability of such knowledge and related proficiencies.

American Psychological Association (2002). Ethical Principles of Psychologists and Code of Conduct. *American Psychologist*, 57, 1060-1073.

Neimeyer, G. J., Taylor, J. M., & Rozensky, R. H. (2012). The Diminishing Durability of Knowledge in Professional Psychology: A Delphi Poll of Specialties and Proficiencies. *Professional Psychology: Research and Practice*, 43, 364-371.

- 5.2 *Federal Rules of Evidence*, Rule 702 (“Testimony by Expert Witnesses”); *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993); *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)

- 6.1 *Denhof et al. v. City of Grand Rapids*, 494 F.3d 534 (6th Cir. 2007), where the court held that the department-retained evaluating psychologist was not impartial and intended to find the plaintiffs

unfit regardless of what the actual fitness-for-duty evaluation results revealed. The court found that the psychologist had formed an adverse opinion about the plaintiffs before he examined them, that the police chief knew of this opinion, and, therefore, that the police chief could not assert a “safe harbor” defense based on an honest reliance on the psychologist’s opinion.

Role conflict is to be attended to and managed in psycho-legal evaluations (Greenburg & Shuman, 1997).

Greenburg, S. A., & Shuman, D. W. (1997). Irreconcilable Conflict Between Therapeutic and Forensic Roles.

American Psychological Association (2002). Ethical Principles of Psychologists and Code of Conduct. *American Psychologist*, 57, 1060-1073.

American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68, 7-19.

- 7.3 Examiners should establish at the outset the specific referral question(s). See Corey & Borum, 2013; APA EPPCC, 2002; SGFP, 2013.

Corey, D.M. & Borum R. (2013). Forensic Assessment of High-Risk Occupations. In Otto R. K., & Weiner, I.B. Handbook of Psychology, Second Edition, Volume 11, Forensic Psychology. New Jersey: Wiley

American Psychological Association (2002). Ethical Principles of Psychologists and Code of Conduct. *American Psychologist*, 57, 1060-1073.

American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68, 7-19.

- 7.4 *Colon v. City of Newark*, #A-3260-03T23260-03T2, 2006 WL 1194230 (N.J.A.D. 2006); *Thomas v. Corwin*, 483 F.3d 516 (8th Cir. 2007); *Thompson v. City of Arlington*, 838 F.Supp. 1137.

“An employer is entitled only to the information necessary to determine whether the employee can do the essential functions of the job or work without posing a direct threat. This means that, in most situations, an employer cannot request an employee's complete medical records because they are likely to contain information unrelated to whether the employee can perform his/her essential functions or work without posing a direct threat” (EEOC. (2000). *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act: Compliance Manual* (Vol. II, Sect. 902, No. 915.002. Washington, DC: Equal Employment Opportunity Commission).

It is principle to the conduct of psycho-legal evaluations that the examiner rely on multiple modes and methods of data collection (Heilbrun, Grisso, & Goldstein, 2009).

Heilbrun, K., Grisso, T., & Goldstein, A. M. (2009). Foundations of forensic mental health assessment. New York: Oxford University Press.

It is a standard of practice in psycholegal evaluations to include in a report of assessment findings any limitations to the reliability and validity of the assessment.

American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68, 7-19.

7.5 *General Electric Co. v. Joiner*, 522 U.S. 136 (1997). Held that a district court judge may exclude expert testimony when there are gaps between the evidence relied on by an expert and his conclusion, and that an abuse-of-discretion standard of review is the proper standard for appellate courts to use in reviewing a trial court's decision of whether expert testimony should be admitted.

8.1 *Schloendorff v. Society of New York Hospital*, 211 NY 125, 105 N.E. 92 (N.Y. 1914). Landmark case establishing the legal principle of informed consent or, in the alternative, disclosure, as a basic element in the relationship between a health care provider and a patient or examinee.

*Berthiaume v. Caron, Bivins & Donohue*, (1st Circuit, 1998), 142 F.3d 12, includes a discussion of what constitutes duress in consenting to testing. Plaintiff objected to the nature of testing, but the written consent he gave and his cooperation with testing was more persuasive to the court than his after the fact objections.

*Colon v. City of Newark*, #A-3260-03T23260-03T2, 2006 WL 1194230 (N.J.A.D. 2006) is relevant to informed consent of the employer: employer failed to provide relevant data to the evaluating psychologist and Appellate court sustained a negligent retention verdict.

8.1.1. *Perez v. City of Austin, et al.* #A-07-CA-044 AWA, 2008 WL 1990670 (W.D. TEX.) Officer Perez prevailed in admitting into evidence his self obtained 2<sup>nd</sup> opinion FFDE in support of his claim that the Austin Police Department's psychologist failed to disclose the true nature of the evaluation, i.e., failed to provide full informed consent.

8.1.2. *Thompson v. City of Arlington*, 838 F.Supp. 1137; 1993 U.S. Dist. N. D. Texas. Police officer can be compelled to release medical records, overriding constitutional right to privacy in interest of public safety.

*Redmond v. City of Overland Park*, 672 F.Supp.473 D. Kansas 1987.

Summary judgment: ER prevailed as a matter of law in its right to carry out an FFDE vs the employee's right to privacy.

*McKenna v. Fargo*, 1978 U.S. Dist. 451 F.Supp. 1381 (D.N.J 1978), the court, in weighing the individual right to privacy with the state's interest in disclosure of private information by a public employee, considered important "the nature of the work to be done by the employee and the dangers that can result from it."

- 8.1.3 *Bass v. City of Albany*, 968 F.2d 1067 (11<sup>th</sup> Cir. 1992), if terminated as a result of an FFDE, the examinee has the right to understand the basis for the termination, which would therefore include access to the psychological report and all data relevant to the production of that report.
- 8.1.4 *Thomas v. Corwin*, 483 F.3d 516 (8<sup>th</sup> Cir. 2007), a potential outcome of non-compliance with the FFDE process includes termination.
- 8.2 It is important for the examiner to clarify the ethical responsibilities to each party to the case. Fisher, M. A. (2009).

Replacing “Who Is the Client?” With a Different Ethical Question. *Professional Psychology: Research and Practice*, 40, 1-7.

*Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*. (2000b). Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Privacy of Individually Identifiable Health Information.

- 8.3 *Pettus v. Cole* (1996, Cal. App.) California Appeals court case which found that the employer does not have a right to personal information or private health information, only job relevant information, and an explicit release of information is required for the evaluator to release information to the employer beyond job relevant functional capacity information.
- 9.1 It is axiomatic in the practice of psychological assessment that the examiner rely on multiple methods and data sources to reduce bias and error, and to increase accuracy. See Packer & Grisso (2011)

Packer, I. K. and Grisso, T. (2011). *Special Competencies in Forensic Psychology*. New York: Oxford University Press. 9.4

American Psychological Association (2013). *Specialty Guidelines for Forensic Psychology*. *American Psychologist*, 68, 7-19.

*Anderson v. Little League Baseball, Inc.*, 794 F.Supp. 342, 61 USLW 2050 (D. Ariz. 1992).

10. Corey (2011) provides a detailed treatment regarding the standards of practice related to FFDE reporting and recommendations. Also see Anfang, Faulkner, Fromson & Gendel (2005) and Gold & Shuman (2009).

Corey, D. M. (2011). Principles of fitness-for-duty evaluations for police psychologists. In J. Kitaeff (Ed.), *Handbook of police psychology* (pp. 263-293). New York, NY: Routledge.

Anfang, S. A., Faulkner, L. R., Fromson, J. A., & Gendel, M.H. (2005). American Psychiatric Association resource document on guidelines for psychiatric fitness-for-duty evaluations of physicians. *Journal of the American Academy of Psychiatry and the Law*, 33, 85-88.

Gold, L. H., & Shuman, D. W. (2009). *Evaluating mental health disability in the workplace*. New York: Springer Science & Business Media.

10.1 *Lassiter v. Department of Justice* (1993) held that the proper standard when assessing the probative weight of medical opinion in an FFD evaluation is (1) whether the opinion was based on a medical examination, (2) whether the opinion provided a “reasoned explanation for its findings as distinct from mere conclusory assertions” (p. 4), (3) the qualifications of the expert rendering the opinion, and (4) the extent and duration of the expert’s familiarity with the condition of the employee. In *Slater v. Dept. of Homeland Security* (2008), the Merit System Review Board concluded that FFD reports that were “entirely conclusory, devoid of any medical documentation or explanation in support of their conclusions” carried less “credibility and reliability” than those including “a thorough, detailed, and relevant medical opinion addressing the medical issues of the agency’s removal action.”

10.2 Heilbrun, Grisso, and Goldstein (2009) provide guidance on selecting models for communicating the examination results and state that the examiner articulates the connection between the psychological disorder and the functional [job] impairment/s.

Heilbrun, K., Grisso, T., & Goldstein, A. M. (2009). *Foundations of forensic mental health assessment*. New York: Oxford University Press.

EEOC Enforcement Guidance, 2000; *Lassiter v. Department of Justice* (1993).

10.3 “A doctor who conducts medical examinations for an employer should not be responsible for making employment decisions or deciding whether or not it is possible to make a reasonable accommodation for a person with a disability. That responsibility lies with the employer. The doctor’s role should be limited to advising the employer about an individual’s functional abilities and limitations in relation to job functions, and about whether the individual meets the employer’s health and safety requirements” (*ADA Technical Assistance Manual*, January 1992. Publication EEOC-M-1A (10/29/2002 Addendum).

“Employers do not have a cognizable interest in dictating a course of medical treatment for employees who suffer nonindustrial injuries. That is a matter for the employees to decide in consultation with their own health care providers—medical professionals who have their patients’ best interests at heart.” *Pettus v. Cole*, 49 Cal.App.4th 402 (1996).

10.5 *Hammon v DHL Airways*, 997 (1999); *Larson v. Koch Refining Co.* (1996); *Barnett v. U.S. Air, Inc.* (2000).

“An employer should be cautious about relying solely on the opinion of its own health care professional that an employee poses a direct threat where that opinion is contradicted by documentation from the employee’s own treating physician, who is knowledgeable about the employee’s medical condition and job functions, and/or other objective evidence. In evaluating conflicting medical information, the employer may find it helpful to consider: (1) the area of expertise of each medical professional who has provided information; (2) the kind of information each person providing documentation has about the job’s essential functions and the work environment in which they are performed; (3) whether a particular opinion is based on speculation or on current, objectively verifiable information about the risks associated with a

particular condition; and, (4) whether the medical opinion is contradicted by information known to or observed by the employer (e.g., information about the employee's actual experience in the job in question or in previous similar jobs)” (EEOC. (2000). *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act: Compliance Manual* (Vol. II, Sect. 902, No. 915.002). Washington, DC: Equal Employment Opportunity Commission.)

10.6 Health Insurance Portability and Accountability Act (HIPAA), 2000.

12.1 See Otto & Krauss (2009) regarding the ethical, clinical, and legal issues related to deciding whether or not to permit third-party observers (e.g., the impact/affect of third-party’s presence on the interview and objective testing)

Otto, R. K., & Krauss, D. A. (2009, August 10). Contemplating the presence of third party observers and facilitators in psychological evaluations. *Assessment Online First*. doi:10.1177/1073191109336267