

Psychological Fitness-for-Duty Evaluation Guidelines

Ratified by the IACP Police Psychological Services Section
Orlando, Florida 2018

1. Purpose

- 1.1 The IACP Police Psychological Services Section (PPSS) developed these guidelines to educate and inform public safety employers 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 employers. It is desirable that these guidelines be reviewed by both the referring employer and the examiner and that any conflicts between an employer'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* because of an examiner practicing in a manner 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 employers 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 employer and examiner.
- 2.5 These guidelines are written to apply to employers within the jurisdiction of the United States and, as such, may require modification for use by employers 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. As such, an FFDE is considered a “medical” examination under the terms of the Americans with Disabilities Act.¹ 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, as a result of a psychological condition or impairment, (1) may be unable to perform one or more essential job functions or (2) poses a direct threat to him-, herself, or others. 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 to conduct an FFDE, both the employer and examiner may benefit from considering its potential usefulness and appropriateness given the specific circumstances, and the employer may consider whether other remedies (e.g., education, training, discipline, physical FFDE) are appropriate.
- 4.3 The examiner strives to remain impartial and objective and to avoid undue influences by any of the parties involved in the case.
- 4.4 Mental health professionals refrain from rendering fitness-for-duty opinions when they are not conducting an FFDE.

5. Examiner Qualifications

- 5.1 Given the nature of these evaluations and the potential consequences to the employer, the examinee, and the public, it is important for examiners to perform FFDEs with maximum attention to the relevant legal, ethical, and practice standards and guidelines. Such standards include, but are not limited to, the American Psychological Association’s (APA’s) Ethical Principles of Psychologists and Code of Conduct. Guidelines include the APA *Professional Practice Guidelines for Occupationally Mandated Psychological Evaluations*.² Examiners also consider and are guided by statutory and case law applicable to the employer’s jurisdiction. Consequently, it is recommended that these evaluations be conducted by a qualified mental health professional with the following qualifications:

¹ 42 U.S.C. § 12112(d)(4)(A), 29 C.F.R. § 1630.14(c)

² Available at <http://www.apa.org/practice/guidelines/occupationally-mandated-psychological-evaluations.pdf>

- 5.1.1 licensed as a psychologist or psychiatrist with education, training, and experience in the diagnostic evaluation of mental and emotional disorders;
 - 5.1.2 competent in the evaluation of law enforcement personnel;
 - 5.1.3 familiar with the essential job functions of the employee being evaluated and the literature pertinent to FFDEs, especially that which is related to police and public safety psychology;
 - 5.1.4 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 familiar with, and be guided by, other applicable professional guidelines, including, but not limited to, the *Specialty Guidelines for Forensic Psychology*;³
 - 5.1.6 satisfies any other minimum requirements imposed by local jurisdiction or law;
 - 5.1.7 demonstrates ongoing efforts to maintain and develop their areas of competence based on his/her education, training, supervised experience, consultation, study, and professional experience; and
 - 5.1.8 seeks appropriate consultation, supervision, and/or specialized knowledge to address pertinent issues outside his/her areas of competence that may arise during an FFDE.
- 5.2 When an FFDE is known to be in the context of litigation, arbitration, or another adjudicative process, it is suggested the examiner 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 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 employer 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).

³ Available at <http://www.apa.org/pubs/journals/features/forensic-psychology.pdf>

- 6.2 If such conflicts are unavoidable or deemed to be of minimal impact, the examiner discloses the potential conflicts to all affected parties and obtains 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 employer and examiner to consult with one another before an FFDE commences 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. It is also recommended that the referral, and the basis for it, be documented in writing, either by the employer or the examiner.
- 7.4 When conducting the FFDE, it may be 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, health care 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 related to job performance issues and/or the suspected job-impairing mental condition. Where possible and relevant, it may prove helpful to gather information from other collateral sources.
- 7.5 Examiners are encouraged to incorporate practices consistent with the Genetic Information Nondiscrimination Act designed to minimize the probability of receiving prohibited information either from the examinee, when requesting their health care records, or from other sources.⁴

⁴ Among other provisions, the Genetic Information Nondiscrimination Act of 2008 (29 C.F.R. § 1635, Title II) prohibits employers and their agents from gathering or considering an employee's family medical history.

- 7.6 When some portion of the information requested by an examiner is unavailable or is withheld, the examiner assesses 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. The examiner obtains the informed consent of the examinee to participate in the examination. Common elements of informed consent 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 evaluations 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 employer 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 employer 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 strives to 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 professional judgment, an FFDE examiner strives to utilize multiple methods and data sources 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 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, examiners are encouraged to obtain informed consent from the employer, the examinee, or from the third party, as appropriate. This typically includes 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 employer that contains a description of the rationale for the FFDE and the methods employed and addresses the referral question(s).
- 10.1.1. The content of the report should be guided by the referral question(s), the employer's written policies and procedures, the applicable terms of any labor agreement, relevant law, the terms of informed consent, and the employee's authorization.
 - 10.1.2. Because FFDEs may become part of an adjudicative process, examiners are encouraged to maintain detailed records that allow scrutiny of their work by others.
 - 10.1.3. Examiners attempt to present findings and opinions in ways that promote understanding and 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 psychologist be prepared to provide, if requested, a description of the employee's functional impairments or job-relevant limitations unless prohibited by law, employer 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. However, whether a recommended restriction or accommodation is reasonable for the specific case and employer 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 employers 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. Employers 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 Examiners who make use of telecommunication technologies during the FFDE process strive to conform to the *APA Guidelines for the Practice of Telepsychology*.⁵

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.

⁵ Available at <http://www.apa.org/practice/guidelines/telepsychology.aspx>