Psychological Fitness-for-Duty Evaluations for Police and Public Safety Personnel

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Practice Standards (IACP Guidelines)

According to the IACP PPSS Fitness-for-Duty Evaluation Guidelines, an 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 officer is able to safely and effectively perform his or her essential job functions.”
Knowledge and Competence

- Law enforcement agencies have the right to order an employee to submit to an FFDE and the employee must comply or risk disciplinary action (*Conte v. Horcher, 1977*).
- Law enforcement agencies are responsible for ensuring the psychological stability of their employees (*Bonsignore v. City of New York, 1982*).
- They are not immune from (vicarious) liability if negligent in their responsibilities to retain only fit officers.

Knowledge and Competence

- The Occupational Safety and Health Act of 1970 (OSHA) requires employers to provide a workplace free from recognized hazards likely to cause death or serious harm.
Knowledge and Competence

• When there is objective evidence that an employee, due to a mental condition, is unable to perform essential functions of their job or presents a direct threat a fitness-for-duty evaluation (FFDE) can be mandated (EEOC, 2000).

Knowledge and Competence

• An employer need not wait until further harm occurs before a preemptive determination of direct threat can be made, particularly in a position involving public safety (see Brownfield v. Yakima, 9th Cir., 2010).
Indeed, in *Watson v. City of Miami Beach*, the court held that where a “police department reasonably perceives an officer to be even mildly paranoid, hostile, or oppositional, a fitness for duty examination is job related and consistent with business necessity.”

Furthermore, the court opined that armed officers “can do tremendous harm if they act irrationally,” and “the ADA does not, indeed cannot, require a police department to forgo a fitness for duty examination to wait until a perceived threat becomes real or questionable behavior results in injuries.”
Knowledge and Competence

- The evaluations should be conducted by licensed psychologists with specialized knowledge, training and skill in the area of police and public safety (Borum, Super, & Rand, 2003; Corey, 2011; IACP, 2009; Stone, 2000).

Specialized Knowledge, Training and Skill

- In 2010 the American Board of Professional Psychology (ABPP), the national certifying body for specialty competence in psychology, unanimously accepted Police & Public Safety Psychology as its fourteenth specialty board (Corey, 2011).
- In 2013 the American Psychological Association, the largest scientific and professional psychology organization in the world, recognized Police & Public Safety Psychology as a specialty in professional psychology.
Specialized Knowledge, Training and Skill

- ABPP certification represents the highest level of professional competence and functions as quality assurance and consumer protection.
- As agencies become more familiar with ABPP, such credentials will likely become the standard for law enforcement agencies seeking FFDEs.

Knowledge and Competence

- Because of the high stakes—potential harm to the officer, the agency, and the community—and the necessity to understand the complex legal and practice requirements, expertise is imperative.
- The case of *McCabe v. Hoberman* (1969) established that by using experts departments are not making decisions arbitrarily and capriciously.
Professional, Ethical, and Legal Standards for Fitness

- FFD evaluations should be conducted in accordance with existing guidelines (Borum, Super, & Rand, 2003).
- Examiners are required to know the legal criteria for fitness in their jurisdiction (APA, 2002; AP-LS, 2008; Aumiller et al., 2007; Super, 1997).

The Complexity of Fitness Determinations

- Despite written guidelines defining psychological fitness (IACP, 2009) as well as Federal and State statutes and case law, determinations are often complex, involving a multitude of variables.
- The complexity of fitness determinations is likely a reflection of the complex nature of human existence.
The Complexity of Fitness Determinations

- Clear expectations about how these high-stakes complex medical examinations should be conducted will result in higher-quality evaluations and a fairer process for agencies and employees (Borum, Super, & Rand, 2003).
- We begin to do this by comparing and contrasting psychological suitability with psychological fitness on a continuum.

Suitability and Fitness on the Continuum

- The continuum has at the lower end, the concept of “suitability,” which contains psychological “problems” such as rigidity, poor attitude, low self-confidence, deficits in social competence, or bias.

- At the higher end, medical disability, contains psychological disorders (e.g., Bipolar Disorder) that impair life or work functioning and constitute the higher bar or threshold required not only for determining that one is unfit and depriving them of property rights (Corey, 2007), but for even meeting the legal threshold sufficient for referral/medical inquiry (ADA, 1990).
Getting Started Thinking About
Fitness

- The IACP Psychological Fitness-for-Duty Guidelines (IACP, 2009) advanced threshold consideration requiring that a job-impairing psychological condition must be evident in order to evaluate fitness.
- Piechowski and Drukteinis (2011) compare FFDEs to other disability evaluations in that the issue relates to impaired functional capacity to work due to a mental condition.
- Anfang, Faulkner, Fromson, and Gendel (2005) describe fitness-for-duty evaluations as examinations of impairment of job duties due to illness (i.e., psychiatric disorder, including substance abuse disorder) or injury.
- Decker (2006) describes FFDEs as relating to “mental illness” and “disability.”

Suitability

- Although job-relevant risk factors considered by psychologists during preemployment assessments include mental or emotional conditions, only some of the issues considered during the evaluation are medical in nature and many are nonmedical such as personality characteristics and background data unrelated to mental or physical health.
Suitability

- Mental illness is rarely the issue in suitability determinations. More often suitability determinations are made based on a variety of counterproductive behaviors or characteristics such as a lack of initiative, unwillingness to follow rules, or argumentativeness (Ben-Porath et al., 2011).

Fitness

- According to Corey (2011), most states have statutes and/or administrative rules imposing mental fitness and more than half of those 38 states require their officers to be free of an emotional or mental condition that adversely impacts their ability to do the job.
- The California Government Code § 1031(f) states that peace officer shall be free of any emotional and mental condition that might adversely affect their work. That is the standard that most agencies have adopted.
- In Sager v. County of Yuba (2007) the court found protest to the California Code absurd.
Fitness

- According to Borum, Super and Rand (2003), it is instructive to consider that manner in which legal disputes regarding FFDEs have been resolved by other courts.
- Again, the statutory and regulatory requirements in the jurisdiction you are examining are most relevant.

Fitness

- Importantly, FFDEs are disability-related inquiries or medical examinations according to EEOC.
- Employees have a right to due process before being deprived of their property interest in their job (Cleveland Brd. Of Educ. v. Loudermill [1985, US. Sup. Ct.]).
- According to the EEOC, an employer cannot terminate an employee or take adverse action against an employee based on a medical exam without establishing that a “condition” exists that is job-impairing and cannot be eliminated or reduced by reasonable accommodation.
According to Decker (2006), the following are the most common psychiatric diagnoses of officers referred for FFDE and found unfit:
- Major Depression
- Bipolar Disorder
- Personality Disorder
- ADD

According to Allen (2000), the most common diagnoses associated with unfit officers are:
- Depression
- Bipolar
- Substance Use Disorder
Unfit Versus Fit

- Decker (2006) and Allen (2000) identify some other disorders associated with FFDE referrals:
  - Anxiety Disorder
  - PTSD
  - Psychotic Disorder
  - Developmental Disorder

Unfit Versus Fit

- In the Decker (2006) study, those officers found fit where found fit because of an absence of psychiatric diagnosis.
- Importantly, Major Depression was most associated with being found unfit, but soon returned to full duty.
More Thinking About Fitness

- An important question in terms of fitness is “how can a medical examiner make an ultimate opinion of unfit based on factors that:
  1) do not meet the basic legal threshold for evaluating the person in the first place, and
  2) are insufficient grounds for taking adverse employment action (e.g., disability separation)?”

More Thinking About Fitness

- Take home message: Fitness exams are narrower in scope and the bar for determining an incumbent is unfit is far higher than the criteria for finding an applicant or candidate unsuitable.
More Thinking About Fitness

- The proposed structure for considering FFD determinations, which are medical in nature and concerned with psychological disorder or illness impairing essential work functioning, should aid the examiner in selecting which variables are more (neurocognitive symptoms, e.g., attention and memory) or less (attitude and effort) relevant to the task of determining fitness.

More Thinking About Fitness

- Another important anchor to consider is the referral question, which is constrained by law, and guides and constrains the forensic mental health assessment.
Referral

- When concern about problematic behavior arises, determining if an FFDE is justified is critically important because proceeding without sufficient basis can result in negative consequences to both the agency and the employee (Borum, Super, & Rand, 2003).
- During the pre-referral conference, the relevant clinical, administrative, and forensic questions can be clarified.

Categories of Fitness

- Psychological fitness for duty should be distinguished from other categories of fitness, including physical fitness, intellectual fitness, moral or character fitness, and general medical fitness.
- Employees may be psychologically fit for duty while being otherwise unfit or unsuitable for the position for reasons other than the presence of an impairing mental health condition.
Referral

- If an FFDE is determined to be justified during the pre-referral conference, the examiner then clarifies what records are needed, what the process will entail, what the potential outcomes may be, and what would be included in the written report.

Reasons for Referral

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<tr>
<th>Sample of reasons for referral</th>
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<tr>
<td>Excessive force</td>
<td>Poor judgment</td>
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<tr>
<td>Lack of alertness</td>
<td>Alcohol or drug abuse</td>
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<tr>
<td>Threats to self or to another employee</td>
<td>Suicide attempts</td>
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<td>Psychiatric hospitalizations</td>
<td>Sexual misconduct</td>
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<td>Observed symptoms (e.g., tremulousness, sweating, crying, weight loss, sleepiness) that may be due to psychological problems such as depression or anxiety</td>
<td>Dramatic changes in personality or behavior (e.g., a good officer suddenly becomes aggressive and is the subject of citizen complaints)</td>
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<td>Suspected domestic violence</td>
<td>Arrest for driving under the influence or an alcohol-related altercation</td>
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<td>Misuse of authority</td>
<td>Other self-reported psychological issues</td>
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Informed Consent

- Informed consent should be obtained from the referring administrator and the officer, preferably in writing.
- Transparency in all interactions with all parties demonstrates respect, fairness and full disclosure consistent with psychologists' ethical standards.
- Transparency can reduce misunderstanding and anger.
- Informed consent also serves to remind the parties of the possible benefits and limitations of the FFDE.

Collecting Collateral Information

- As the IACP Guidelines (2009) state, an FFDE “typically relies on multiple methods and data sources in order to optimize the reliability and validity of findings.”
- Determining the degree of consistency among data sources also enhances the accuracy of the evaluation.
- However, such information must be clearly related to the suspected job-impairing mental condition to be consistent with the ADA.
Collecting Collateral Information

- The employer should provide relevant personnel records (e.g., performance evaluations, citizen complaints, internal investigations, formal discipline, commendations), names and contact information of supervisors or specific coworkers who are thought to have relevant information, medical and psychological records (e.g., previous referrals for FFDE or counseling, Family Medical Leave Act certifications, doctor’s notes excusing the officer from work, return-to-work letters, pre-employment psychological evaluations, etc.), and a job description.

Collecting Collateral Information

- While the employer is an essential source of information, obtaining data from other sources potentially more favorable to the examinee may also be useful.
- Collateral information may reflect the biases of the sources, depending on relationships and allegiances with the employer or the examinee.
- The examinee might be asked if anyone, such as a coworker or family member could provide relevant information.
Collecting Collateral Information

- Medical and mental health treatment records are critically important to review, and can only be obtained with the permission of the officer.
- Some officers may resist releasing relevant records, but requiring them as part of an examination has been upheld by the courts.

Individualized Assessment

- In contrast to pre-employment evaluations, which typically use a standardized protocol for all applicants to determine their suitability for employment, an FFDE involves a more individualized approach, based on the underlying psychological problems indicated by the referral information.
Individualized Assessment

- This approach has been described in a US Supreme Court case that required “a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence, and upon an expressly individualized assessment of the individual’s present ability to safely perform the essential functions of the job.”

Selecting Assessment Instruments

- The IACP Guidelines also underscore the importance of selecting assessment instruments “appropriate to the referral question(s).”
Testing

- Despite the individualized nature of these evaluations, there is general consensus regarding the types of psychological tests that should be used:
  - Objective personality tests
  - Specialized inventories (PTSD, Malingering, Substance-Related Disorders)
  - Cognitive tests

Testing and Validity

- In addition to measuring emotional and personality problems (e.g., depression, anxiety, PTSD, antisocial tendencies, alcohol abuse, etc.), many of these tests also contain validity scales, which help determine if the results are accurate and credible.
Detecting Unreliable Reports

- Walfish (2011) found that nearly 60% of the subjects involved in an FFDE-like process produced “fake-good” results by claiming unrealistic virtuousness and denying human foibles that most all people admit.
- Conversely, the validity scales can also alert the FFDE examiner to examinees who malinger or exaggerate problems, perhaps attempting to obtain disability or other benefits.
- Finally, the validity scales can reveal inconsistent or random responding, which may be due to concentration problems, carelessness, or uncooperativeness.

Clinical Interview

- The IACP Guidelines recommend that the clinician conduct a “comprehensive, face-to-face clinical interview” with the officer.
Determination

• In assessing whether an employee can perform his or her duties without a significant risk to the safety of the individual or others, the examiner “must consider the nature of the position and the consequences should the employee fail to perform his duties properly” (Lassiter v. Reno, 1996/1997, at 1153).

Determination

• When evaluating employee fitness, the examiner usually will be required to demonstrate that the risk is highly probable in order to establish that a direct threat exists.
Determination

• However, where the employee’s position implicates the safety of others, and the potential harm is severe, even a low probability that the harm will occur will be sufficient to establish a direct threat (Butler v. Thornburgh, 1990; Hogarth v. Thornburgh, 1993; Myers v. Hose, 1995).

Written Report

• The final stage of the FFDE is to produce a written report that, according to the IACP Guidelines, provides a “clearly articulated opinion that the examinee is presently fit or unfit for unrestricted duty” and explains what, if any, specific job-related functional impairments are present.
Written Report

• The examiner typically amasses a considerable amount of information about the officer during the examination process, but carefully limits the written report to content that is relevant to the referral question, as dictated by ethics and law.

Written Report

• Depending on the referral questions, applicable law, and the agency’s policies and labor agreements, the reports may also include other information, such as the officer’s prognosis and treatment options.
Recommendations

• When requested by the agency, mental health treatment recommendations can help restore an officer to job fitness.

Recommendations

• As the IACP Guidelines state, “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.”
Core Legal Knowledge

According to Corey (2012), the following are critically important to the competent practice of FFDE:

- International Association of Chiefs of Police, Police Psychological Services Section. (2009).
- Sager v. County of Yuba, 68 Cal.Rptr.3d 1, 156 Cal.App.4th 1049 (Cal.App. 2007). (California Court of Appeals ruled that the California statute (Government Code 10310)).
- Brownfield v. City of Yakima, 409-35628, 612 F.3d 1140, 2010 U.S. App. Lease 15524 (9th Cir. 2010).
- Petty v. Metropolitan Government of Nashville-Davidson County, 539 F.3d 431 (6th Cir., 2008).

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