Tips for Conducting Disability Evaluations

by C. Donald Williams, MD, CGP and Greg Couser, MD

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Disability may occur as a result of events that can take place at any time during the life cycle. The World Health Organization defines disability as “the outcome or result of a complex relationship between an individual’s health condition and personal factors, and of the extra factors that represent the circumstances in which the individual lives.” The Social Security Act defines disability as “the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” Private disability insurers have their own definition of disability, and the criteria have changed over the past 20 years to become more restrictive. Workers’ compensation statutes define disability using criteria and language selected by each state.

ACTIVITY GOAL
This article provides an overview of the differences between a treatment role and a forensic role in a disability evaluation context as well as practical information for the psychiatrist who wants to take on the role of assessing individuals for Social Security or workers’ compensation disability.

LEARNING OBJECTIVES
At the end of this CE activity, participants should be able to:
1. Understand the difference between psychiatric treatment consultations and forensic independent psychiatric evaluations in a disability assessment context.
2. Define the difference between Social Security disability evaluations and workers’ compensation evaluations.
3. Identify the process for organizing paperwork, writing the report, and billing for services.

TARGET AUDIENCE
This continuing medical education activity is intended for psychiatrists, psychologists, primary care physicians, physician assistants, nurse practitioners, and other health care professionals who seek to improve their care for patients with mental health disorders.

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A few simple principles can be helpful. Avoid recommending time away from work unless it is medically required. Using medical discretion, it may be in the patient’s best interest to have a short work absence if there is a specific treatment plan that will ultimately improve the patient’s productivity. For example, psychotherapy with specific homework, acclimating to the adverse effects of new medications, and structuring activity at home to simulate work are instances when short absences may be helpful.

Return to work need not be an all-or-none occurrence. Occupational health providers rely on treating psychiatrists for suggestions for accommodations. Patients with major depression, for example, often struggle with decreased concentration and low energy, ultimately affecting their persistence and pace at work. In such cases, it may make sense to return to work initially with reduced hours. It also helps to return a patient to work later in the work week so that he has a weekend to recover. It may take some creativity regarding suggestions to keep patients working.

In clinical situations, when psychiatric impairment is severe and it is not possible for the person to work safely, an extended work absence may be required. Psychiatrists are always ethically obligated to document response to any identified risk of self-harm or harm to others; this duty applies in both treatment and forensic evaluations. Some ideas for activity and work restrictions for patients struggling with psychiatric impairment are given in Table 1.

It is normal for patients to be anxious about returning to work, particularly after an extended absence. Psychiatrists can help by talking about it, normalizing it, and suggesting some practical strategies to ease the return to work for the patient. For example, psychiatrists can help their patients prepare to process or even rehearse what they will say to coworkers on return to work. This is a good opportunity to discuss relationship boundaries. The conversation could also involve exploring psychosocial barriers to returning to work and helping to overcome these barriers. Reframing is often indicated when catastrophizing is involved, particularly when the patient is feeling anxiety about a specific person or situation at work.

Treating psychiatrists are often asked to provide an estimate of how long the disability will last. In such cases, it might be helpful to refer to published disability guidelines (eg, Official Disability Guidelines and MDGuide). Treating psychiatrists are able to provide useful information regarding their patients’ disabilities as long as they keep in mind the primary duty of service to the patient and avoid potential conflicts of interest.

The forensic psychiatrist

Whereas a treating psychiatrist has a primary duty to provide care for his patient, the psychiatrist functioning in a forensic role has a duty to determine the truth. This may be in conflict with the examinee’s view of his interests, and it is usually best to avoid simultaneously assuming both roles. Psychiatrists may also find themselves subject to explicit or implicit pressures to report findings favorable to a third-party in order to secure more assignments. A psychiatric treatment consultation may assess the severity of impairment as part of the diagnostic formulation, but its primary purpose is to assess the need for treatment. Thus, the establishment of a doctor-patient relationship is appropriate. An independent (forensic) psychiatric disability evaluation by contrast is for the purpose of determining “the truth of the matter” within a medicolegal context.

Informed consent must be obtained and should be recorded in writing as part of the evaluation. Limitations on confidentiality in disability evaluation settings should be made explicit, and noted in the record. In independent (forensic) disability evaluations, the examiner must explicitly inform the examinee that no doctor-patient relationship is being established and that no treatment will be offered. By contrast, in psychiatric treatment consultations in disability-context treatment, a doctor-patient relationship may be established if agreed to by all parties and the referring authority.

Maintaining objectivity and consistency is challenging and requires self-knowledge: understanding the process involved in each type of evaluation with an appreciation of risk factors that can undermine professional neutrality is essential. Risk factors include not understanding the different roles of evaluator and therapist, report bias due to the wish to secure repeated assignments, unexamined countertransference reactions, and emotional responses to otherwise unlikeable examinees. These self-assessment questions can be helpful: “Would your opinion be the same no matter who paid for it?” “Is your opinion in this case consistent with all other opinions you have offered in cases with similar fact patterns?” “Do you have the sense that something doesn’t add up?” “Would you feel comfortable defending your opinion to an attorney in front of the jury if that attorney had access to all of your independent medical examinations?”

Social Security disability evaluations

When a person applies for federal Social Security Disability Insurance (SSDI) because of a psychiatric condition, the Social Security Administration (SSA) will request that the patient’s treating mental health professional provide certain information so that a decision can be made regarding eligibility for benefits. The SSA may also request a consultative examination from either the treating mental health professional or from a non-treating mental health professional if information from the treatment source is not sufficient. The procedure for determining disability is highly specific, defined by statute, and unique to the SSA.

SSDI evaluations are the least complicated form of disability assessment and a good way to begin adding disability assessments to one’s practice mix. Performing SSDI evaluations can be an excellent source of gaining experience. Conducting efficient assessments of individuals with a wide variety of disorders presents an opportunity to refine diagnostic conceptualization and writing skills.

Because the psychiatrist may not be familiar with the person he is evaluating, personal safety concerns must be taken into account. A review of the file before the evaluation may indicate that the evaluation should be conducted in a secure facility. Records provided for review are typically limited to 25 pages or less and causation is not an issue. The only stakeholders are the examinee and local Disability Determination Services (DDS). DDS requires at least 1-hour face-to-face contact during the evaluation. An experienced examiner can usually complete the report in less than an hour following the face-to-face evaluation, provided the DDS outline is used as a template so that the factual data can be entered contemporaneously with the face-to-face evaluation. Fees are paid according to an agreed schedule set by DDS, eliminating the need for any negotiation with the contracting party.

The Consultative Examination Guide is available on the SSA Web site. In common with all psychiatric disability assessments, the purpose of the evaluation should be explained and the examinee should be advised of the limitations on confidentiality associated with applying for SSDI. The examinee should be informed that the evaluation is not confidential and that no doctor-patient relationship is established.

Table 1 – Ideas for activity and work restrictions for patients struggling with psychiatric impairment

<table>
<thead>
<tr>
<th>Idea for Activity Restriction</th>
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<tr>
<td>• Reduce or eliminate activities that depend on vigilance for safety (eg, no operating complex machinery)</td>
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<td>• Limit tasks in which error rate is affected by decreased concentration</td>
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<td>• Minimize multitasking (ie, as much as possible, one task at a time)</td>
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<td>• Minimize complex decision making (particularly when there are tight time constraints)</td>
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<td>• Limit management or supervisory responsibilities</td>
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<tr>
<td>• Limit tasks with frequent customer contact</td>
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<tr>
<td>• Allow more time to learn new tasks</td>
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<tr>
<td>• Allow extra time to complete tasks</td>
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<tr>
<td>• Consider allowing ability to self-pace</td>
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<tr>
<td>• Minimize distractions</td>
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<tr>
<td>• Clearly communicate expectations, responsibilities, and deficiencies (should any occur)</td>
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<tr>
<td>• Allow flexibility to attend appointments</td>
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<tr>
<td>• Allow flexibility in daytime work hours (ie, if sleep is a significant issue)</td>
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<td>• Allow shorter workdays/workweeks</td>
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(Please see Disability Evaluations, page xxx)
Disability Evaluations
Continued from page xx

Workers’ compensation evaluations
Referrals for psychiatric assessments may come from state agencies administering workers’ compensation programs, from attorneys representing self-insured employers, or from attorneys representing injured workers. These are divided into psychiatric treatment consultations and forensic psychiatric evaluations.

Psychiatric treatment consultations
Psychiatric treatment consultations are requested for the purpose of determining diagnoses that may be related to an occupational or industrial injury and recommending treatment. In these evaluations, the psychiatrist is a consultant to the referral source, which may be a physician providing primary treatment under the claim or another party, and may form a doctor-patient relationship with the examinee if agreed to by both parties and authorized by the responsible state workers’ compensation authority.

Treatment consultations typically involve a limited record review. Although an opinion is requested regarding whether treatment is needed for diagnoses related to an occupational or industrial injury, no opinion is sought regarding a statutorily defined level of impairment or permanent partial disability. In other words, no monetary award is paid to a claimant as a result of a psychiatric treatment consultation, and it can be viewed as similar to treatment consultations occurring in other medical contexts. In terms of complexity, they are midway between an SSDI evaluation and an independent medical evaluation.

Forensic psychiatric evaluations
By contrast, the determination of whether a medical/psychiatric condition is work-related through an independent psychiatric (forensic) evaluation is part of an adversarial process financially impacting both employees and employers, and experts are typically hired by both defense and plaintiff. The evaluating psychiatrist is asked to diagnose psychiatric conditions, and if any are present, to recommend appropriate treatment. The psychiatrist is asked to respond to the following questions regarding diagnosed psychiatric conditions:

- Is it a new condition causally related to an occupational injury or disease?
- Is it a preexisting condition aggravated by an occupational injury or disease?
- Is it a condition unrelated to the industrial injury but posing a barrier to recovery?
- Is it a condition neither related to the industrial injury nor posing a barrier to recovery?

Psychiatric evaluators are provided with the patient’s prior independent medical examinations, medical treatment records, physical therapy records, and vocational rehabilitation records, as well as files related to the legal process. These must be reviewed page by page, so that the chronology of events can be correlated with preinjury and postinjury events and symptoms. The psychiatric interview comprises standard elements of a psychiatric evaluation, with particular emphasis on work history and the response to life stressors.

Although screening tests for depression and anxiety are useful in clinical practice, they have less utility in forensic evaluations because they measure only one psychological dimension. Because these screening tools lack validity scales, the examiner has no objective way to draw inferences regarding the examinee’s cooperation with the test-taking procedure or whether a pattern of overreporting or underreporting is probable.

Psychometric test instruments with extensive empirical validation can enable the examiner to draw inferences regarding the examinee’s cooperation with the test-taking procedure, psychiatric diagnosis, and dimensional severity. DSM-5 Section 2 personality disorders, and DSM-5 Section 3 personality trait dimensions.

Working with third parties
Make sure you have an assignment letter from the requesting party before undertaking an evaluation. The scope and purpose of the evaluation will be defined in the letter, and the responsibility of each party can be defined. In complex personal injury and workers’ compensation evaluations, records may be very extensive, sometimes amounting to several thousand pages.

Be realistic in undertaking assignments and avoid tackling an assignment that is beyond your capacity. Negotiate fee arrangements in advance, whether a flat rate or an hourly rate that will be charged based on time spent. The hourly rate will be specified in advance and should reflect the examiner’s experience and reputation as well as location and other market considerations. If an hourly rate is agreed to, the examiner should maintain a meticulously organized log sheet of time spent, on a minute-by-minute basis. Consciously evaluate the fairness and clarity of the negotiation, with thoughts to sustainability. A healthy professional relationship is a relationship that will continue, potentially for many years. Complete transparency is of the essence.

Organizing the records
SSDI evaluations are typically minimal and require little organization. However, a psychiatric assessment in a complex personal injury or workers’ compensation evaluation is likely to be vastly more difficult and usually involves several hundred to more than a thousand pages. These evaluations are exponentially more complex and time-consuming to perform. Files typically are disorganized and contain duplications. Psychiatrists who routinely perform complex assessments use trained clerical staff to organize the files. Tasks that require professional knowledge must be separated from clerical and administrative functions. The records should be organized according to categories. A suggestion for organization is presented in Table 2.

As an alternative to working with heavy 3-ring binders, the records can be scanned by a machine designed to scan 50- to 70-page batches at a time in PDF format. Experienced staff can scan 1000 pages in about an hour. It is convenient to utilize a HIPAA-compliant cloud system because it allows remote computers access to the entire file as well as the report as it is being written. PDF files can be managed with standard commercial software to make the entire file “word searchable” using optical character recognition. For example, all instances in which “depression” occurs in a 1000-page scanned file can be located in seconds. Finally, the 50- to 70-page PDF files

<table>
<thead>
<tr>
<th>Table 2 – Organizing the disability evaluation records</th>
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<tbody>
<tr>
<td>• Identifying data</td>
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<td>• Chief complaint</td>
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<td>• Referral source</td>
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<tr>
<td>• Statement of non-confidentiality and clarity as to relationship not being a doctor-patient relationship</td>
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<tr>
<td>• Independent medical evaluations and consultations</td>
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<tr>
<td>• Medical treatment records</td>
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<tr>
<td>• Physical therapy and physical capacity evaluations</td>
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<tr>
<td>• Vocational documents</td>
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<tr>
<td>• Labor and industries communications</td>
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<tr>
<td>• Legal</td>
</tr>
<tr>
<td>• Summary of the case, formulated according to DSM-IV or DSM-5 depending on instruction</td>
</tr>
<tr>
<td>- Integration of prior evaluations, with identification of clarity and conflict</td>
</tr>
<tr>
<td>- Diagnoses causally related to occupational injury</td>
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<tr>
<td>- Diagnoses aggravated or “lit up” by occupational injury</td>
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<tr>
<td>- Diagnoses neither caused nor aggravated by the occupational injury but which nevertheless constitute a barrier to recovery</td>
</tr>
<tr>
<td>- Diagnoses neither related to the injury nor causing a barrier to recovery</td>
</tr>
<tr>
<td>• Treatment recommendations, including medications, psychotherapy (group or individual), and probable duration; definition of yardsticks to assess progress, including clinical improvement and repeated psychometrics</td>
</tr>
<tr>
<td>• Prognosis</td>
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</table>
Disability Evaluations

Preparing the report

Once the report is organized, beginning with the earliest independent medical examinations from all specialties, the examiner lists each and includes a brief synopsis of the findings. Lengthy descriptions may be appropriate for the psychiatric and other mental health evaluations. When medical records are extensive and cover many years, it is useful to separate them by year during the review. This will make the chronology of contemporaneous clinical observations easier to track, which is particularly useful in determining causation.

Developing a template containing each major heading will make the work flow more smoothly and help protect against accidental omissions (Figure). Quality reports are easy to read, but they require great effort to compose. They should evoke the personality of the examinee and integrate findings from the medical record review, the clinical history, and the mental status examination, and results from any psychological testing. (A comprehensive outline of the contents of a psychiatric disability evaluation is available from several sources.14) Voice recognition software can save time, but the output must be carefully proofread; this is a task best left to trained staff who will approach it with a fresh perspective.

Billing

Social Security disability evaluation fees are defined in advance, and billing merely requires following the prescribed format in submitting charges. For workers’ compensation independent medical examinations, the fee basis may be either a flat rate agreed on in advance or one based on time. It can be difficult to predict in advance the time and effort that will be required to complete any given evaluation, and this is even more difficult with very large files. A projected 5 hours of work may turn out to be 20 hours of work and vice versa.

When the fee is based on time spent, track start and stop times to the minute to be fair to all parties and for self-discipline. Charges for “no shows” and late cancellation policies should be outlined in advance in writing. Similar advance written notice should be provided to parties scheduling deposition or live court testimony, with a copy included in the file. The rules and guidelines governing late cancellation fees for testimony and evaluation should be practical and designed to promote efficient office functioning. Policies should be structured to minimize disruption and aggravation, with the goal of making the work both professionally rewarding and sustainable over the long term.

Conclusions

Do work that meets your highest professional standards, and decline assignments for which that is impossible. Bring the same level of commitment and attention to detail that you do to your clinical practice involving patient care. Be specifically mindful of the fact that as an independent examiner you have no interest in the “outcome”—your only duty is to conduct an examination with a meticulous regard for the truth regardless of referral source.

Start with simpler evaluations, such as those conducted for SSDI determinations for which the records are small, the evaluations are brief, and causation is not an issue. These shorter evaluations will provide practice in undertaking efficient assessments and writing reports. Take on more complex evaluations on a step-by-step basis. If you note the absence of important records, try to acquire them. Writing reports of superior quality is an intellectual challenge that requires sustained mental effort. Developing a team and the infrastructure necessary to handle major complex evaluations requires several years and is best accomplished on a step-by-step basis while learning from experience.

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References

CME POST-TEST

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1. The treatment and forensic roles of a psychiatrist are easily combined.
   A. True
   B. False

2. When working with a patient who has a mental health problem, which of the following is suggested?
   A. The patient should remain off work until he or she has fully recovered from his or her condition.
   B. Make sure that the patient gets back to work as quickly as possible with no easing of responsibility, because that approach always promotes recovery.
   C. Recommend that the patient works from home until he or she has improved.
   D. After performing a psychiatric assessment, make recommendations regarding employment interruption or workplace accommodations based on the patient’s impairment and his or her ability to perform work duties safely.

3. The primary duty of a forensic psychiatrist is to ________.
   A. Protect the interests of the patient or third party
   B. Provide treatment recommendations
   C. Assess the need for treatment
   D. Determine the truth within a medicolegal context

4. Which of the following is least complicated?
   A. Social Security disability evaluations
   B. Workers’ compensation evaluations

5. Which of the following is false in the context of a forensic evaluation?
   A. A doctor-patient relationship must be established.
   B. Informed consent must be obtained.
   C. Limitations of confidentiality must be made explicit.

6. In a forensic independent psychiatric evaluation, the psychiatrist has an ethical duty to identify any suicide risk or threat to others in the person being evaluated and to ensure a clinical response as well as notifying the appropriate authorities.
   A. True
   B. False

7. Screening tests for depression and anxiety are useful in forensic independent psychiatric evaluations in a workers’ compensation setting.
   A. True
   B. False

8. In a psychiatric treatment consultation, the psychiatrist is asked ________.
   A. For his opinion regarding the level of permanent partial disability as defined by statute
   B. To recommend treatment for diagnosed psychiatric conditions and whether the conditions are related to or aggravated by the industrial injury
   C. Whether the disability is permanent

9. In personal injury and workers’ compensation evaluations, the records may be as large as ________.
   A. 100 pages
   B. Hundreds of pages
   C. 1000 pages
   D. Several thousand pages

10. Which of the following is NOT part of the final evaluation report?
    A. Treatment recommendations
    B. Findings from the medical record review
    C. The clinical history
    D. Results of treatment