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The Role of Psychological Fitness-for-Duty Evaluations in Law Enforcement

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Police employers have a legal duty to ensure that police officers under their command are mentally and emotionally fit to perform their duties, and failure to do so can result in significant civil liability to the employer and serious consequences. Occasionally, a law enforcement officer's behavior raises concerns that the officer may be unstable, a physical danger to self and to others, or ineffective in discharging responsibilities.¹ Such behavior may occur on or off duty and may include excessive force, domestic violence, lack of alertness, substance abuse, or other observable counterproductive behaviors. So-called red flags also may include threats to self or others, suicide attempts, psychiatric hospitalizations, or observed symptoms (for example, frequent crying, uncharacteristic irritability, and excessive suspiciousness) that may be due to psychological problems such as depression or anxiety or other psychological conditions or impairments.² When such behavior occurs, and it is reasonably suspected to be attributable, at least in part, to an underlying psychological impairment or condition, a fitness-for-duty evaluation (FFDE) is often necessary to assess the nature of the psychological problem and its impact on job functioning.³

In addition to protecting the community and the officer in question, a key objective of the FFDE is to reduce a law enforcement agency's liability with regard to behavior of an officer who is psychologically unfit to handle the position and help defend against claims of negligence (for example, negligent hiring, training, supervision, and retention). Further, the Occupational Safety and Health Act of 1970 (OSHA)⁴ requires employers to provide a workplace free from recognized hazards likely to cause death or serious harm. FFDEs provide an avenue for agencies to comply with OSHA. Courts have also held that an agency may be responsible for its officer's violent behavior if it knew or should have known that the officer was so inclined. For example, in the case of *Bonsignore v. City of New York*, an officer shot his wife and then killed himself. The city was found negligent because, in part, the officer "was never identified as a problem officer, despite his displaying many of the signs that should have flagged him as having mental or emotional problems...."⁵ The court held that a law enforcement department must take reasonable precautions to hire and or retain officers who are psychologically fit for duty. The doctrine of official immunity may not be invoked to protect an agency from allegations of vicarious liability, including negligent retention.

The courts also have supported the rights of law enforcement agencies to order FFDEs when appropriate. For example, in *Conte v. Horcher*, a police lieutenant involved in an excessive force incident was ordered by his chief to complete a psychiatric examination. The court ruled, "It is evident that the chief's order here was not only valid and proper, but also necessary to assure the effective performance of the department."⁶ Furthermore, when an order for an FFDE is issued, police officers must comply with it or risk disciplinary actions. For example, an Ohio appellate court affirmed the termination of a police officer who refused to submit to an FFDE following a series of citizen complaints.⁷

The Americans with Disabilities Act of 1990 (ADA)⁸ also must be considered when making medical inquiries of incumbent employees since such inquiries can be performed only when there is an objective reason to believe that the employee may have a medical (that is, psychological) condition that would impair job functioning or pose a direct threat to self or others.⁹ However, under most circumstances the courts have not ruled that an appropriate referral for an FFDE constitutes a violation of the ADA, especially when an FFDE is recommended by the agency's medical or mental health consultant.¹⁰ For example, 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."¹¹ 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 forego a fitness for duty examination to wait until a perceived threat becomes real or questionable behavior results in injuries."¹²

Sometimes, if requested by the referring agency, an FFDE can help identify reasonable accommodations for a disabled employee,¹³ although not all employees who are found unfit for duty meet the definition of "disabled" under the ADA. Whether or not it is required under the ADA, an agency may voluntarily provide an accommodation requested by the employee that would be consistent with the results of an FFDE (for example, avoiding rotating shifts to minimize an officer's problems with insomnia) if the accommodation does not create an undue hardship for the agency.

If an officer is found psychologically unfit, some agencies ask the evaluator to offer mental health treatment recommendations that can help restore an officer to job fitness, but only when specifically requested by the agency. For example, an officer may develop posttraumatic stress disorder (PTSD) after an officer-involved shooting. Despite undergoing debriefing as recommended by IACP Police Psychological Services Section (PPSS) *Officer-Involved Shooting Guidelines*,¹⁴ the officer might continue to experience significant symptoms (for example, insomnia, hypervigilance, startle response, and avoidance of high-risk calls) that impair the officer's ability to work effectively. The FFDE can help the officer by recommending a course of action to treat the symptoms and restore fitness while protecting the public and the officer through removal from law enforcement duties. Some agencies, however, prefer that the FFDE be confined to assessing work fitness only, leaving treatment recommendations to the officer's treatment providers.

Fitness-For-Duty Examination Defined

According to the IACP-PPSS *Psychological Fitness-for-Duty Evaluation Guidelines (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 employee is able to safely and effectively perform his or her essential job functions."¹⁵ An FFDE can be triggered by a perceived threat in the workplace¹⁶ or by a reasonable suspicion that the officer has a psychological problem that might affect work performance. For law enforcement personnel, a request for an FFDE typically comes from a police administrator and is compulsory.¹⁷

Fitness-For-Duty Examination versus Mental Health Treatment

Understanding the difference between mandating an FFDE and referring an officer for mental health treatment services or counseling is important. While the primary reason for referring an officer for mental health treatment is the well-being of that officer, the primary reason for ordering an FFDE is the concern that the officer may be unable to function safely and effectively at work. Sometimes administrators are reluctant to order an FFDE because they want to avoid perceived complications,¹⁸ and they may recommend counseling instead. However, not ordering an FFDE when one is warranted can cause more harm than good. An officer's therapist or doctor has no duty to assist the agency in making decisions regarding fitness for duty, may be prohibited from doing so because of confidentiality requirements, and may not be competent to do so; as explained in the *Guidelines*, specialized knowledge, training, and experience are necessary to conduct an FFDE. Furthermore, an officer's

therapist is likely to rely primarily, if not solely, on the officer's self-report in deciding what the problems are, whereas an FFDE examiner also relies on collateral information from the agency and elsewhere and performs objective psychological testing.¹⁹ Whereas the FFDE is an inquiry with limited officer privacy and with the associated records belonging to a third party (the agency), counseling is a therapeutic intervention with the traditional doctor-patient confidential relationship in which the officer is the client. When a therapist provides counseling, the officer's consent is required before the therapist can release records or communicate with the employer. Furthermore, the duty of a therapist includes advocating for the client. As a result, information obtained from a therapist is likely to be favorable to the officer's goals and perspectives. Finally, a psychologist, under most circumstances, should not provide both therapy and an FFDE to the same officer. This is likely to engender a conflict of interest caused by a multiple relationship with the officer, and the roles of FFDE examiner and treating psychologist are generally incompatible.²⁰

Examiner Qualifications

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, only licensed and specifically trained psychologists experienced in working with law enforcement agencies and personnel should conduct FFDEs.²¹ Furthermore, evaluating mental health problems in the workplace requires knowledge of the relevant laws²² and ethical principles²³ and how they are applied in the appropriate jurisdiction. Police psychology was recognized by the American Psychological Association as a specialty in 2008, and in 2010 the American Board of Professional Psychology (ABPP) Board of Trustees, the national certifying body for specialty competence in psychology, unanimously awarded provisional status to police and public safety psychology as its 14th specialty board.²⁴ ABPP certification represents the highest level of professional competence and functions as quality assurance and consumer protection analogous to the Commission on Accreditation for Law Enforcement Agencies,²⁵ the standard in law enforcement certification. As agencies become more familiar with the ABPP, such credentials will likely become the standard that law enforcement agencies will require when seeking psychologists who perform FFDEs.

Referral Process

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.²⁶ A prereferral conference with the police psychologist can assist the agency in determining if an FFDE is within the bounds of ethical practice and the law and if the situation would be better resolved in another way such as additional training or discipline.²⁷ During the prereferral conference, the relevant clinical, legal, administrative, and forensic questions can be clarified to determine if the referral issues are within the psychologist's competencies and if any potential ethical conflicts, such as multiple relationships or conflicts of interest, might compromise a psychologist's objectivity. If an FFDE is determined to be justified during the prereferral 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. The best practice is to document results of the prereferral conference.

Informed consent. Informed consent should be obtained from the referring administrator and the officer, preferably in writing. Transparency in all interactions with the officer and full explanations of the FFDE process and the officer's rights demonstrate respect, objectivity, fair treatment, and disclosure consistent with psychologists' ethical standards.²⁸ Transparency also may reduce the risk of subsequent litigation as a result of a misunderstanding or misplaced anger and enhance the validity of the FFDE by fostering the officer's openness in the evaluation.²⁹ Informed consent also serves to remind the parties of the possible benefits and limitations of the FFDE. It is important that the examinee understands the key elements of the evaluation, has an opportunity to ask questions, and acknowledges the understanding in writing. If the employee is undecided about participating, the matter is best referred back to the agency for resolution before proceeding.

Collecting collateral information. As the *Guidelines* 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.³⁰ However, such information must be clearly related to the suspected job-impairing mental condition to be consistent with the ADA.³¹ The *Guidelines* provide suggestions for obtaining sources of collateral information. The employer should provide relevant personnel records (for example, performance evaluations, citizen complaints, internal investigations, formal discipline, and commendations); names and contact information of supervisors or specific coworkers who are thought to have relevant information and medical and psychological records (for example, previous referrals for FFDE or counseling, Family Medical Leave Act certifications, doctors’ notes excusing the officer from work, return-to-work letters, and preemployment psychological evaluations); and a job description. When an employee asserts that exposure to a traumatic stressor, such as a shooting incident, is contributing to the difficulties, it is best practice to obtain collateral information verifying the existence and the nature of such exposure, when possible. Also, the examiner should review this material before examining the officer.

Although the employer is an essential source of information, obtaining data from other sources potentially more favorable to the examinee also may be useful. Collateral information may reflect the biases of the sources, depending on relationships and allegiances with the employer or the examinee.³² The examinee might be asked if anyone, such as a coworker or family member could provide relevant information. Medical and mental health treatment records are critically important to review and can be obtained only 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.³³

Examination Procedures

In contrast to preemployment psychological evaluations,³⁴ 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. This approach has been described in a U.S. Supreme Court case as requiring “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.”³⁵ The *Guidelines* also underscore the importance of selecting assessment instruments “appropriate to the referral question(s).”

Types of tests. Despite the individualized nature of these evaluations, there is general consensus regarding the types of psychological tests that should be used. Tests that detect mental health problems (that is, psychopathology) and the ability to cope with stress and adversity are frequently useful. Commonly used tests include the Minnesota Multiphasic Personality Inventory-2 (MMPI-2),³⁶ the recently developed MMPI-2-RF,³⁷ and the Personality Assessment Inventory.³⁸ Other tests focus on personality functioning and may include the California Psychological Inventory (CPI)³⁹ and the Inwald Personality Inventory (IPI).⁴⁰ Although the CPI and the IPI are most often used to determine suitability during preemployment evaluations, they may be useful if the evaluator is assessing the employee for a condition or an impairment of personality that negatively affects job functioning.

In addition to measuring emotional and personality problems (for example, depression, anxiety, PTSD, antisocial tendencies, and alcohol abuse), many of these tests also contain validity scales, which help determine if the results are accurate and credible. Sometimes an examinee wants to prove fitness for returning to duty by exaggerating strengths and downplaying weaknesses. However, in the process of making a favorable impression, the examinee may go too far, producing test results that cannot be reliably interpreted. For example, a recent study found that nearly 60 percent of the subjects involved in an FFDE-like process produced “fake-good” results by denying common weaknesses that most psychologically healthy people possess.⁴¹ Conversely, the validity scales can also alert the FFDE examiner to examinees who malingering 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.

Cognitive testing, which measures intelligence, memory, and other brain functions, may be necessary when an officer has suffered a head injury, stroke, or other type of suspected brain injury. In such cases, a psychologist who specializes in neuropsychology may be best suited to perform the FFDE or may be consulted by a police psychologist who retains primary responsibility for the exam.

Interview procedures. The *Guidelines* recommend that the clinician conduct a “comprehensive, face-to-face clinical interview” with the officer. A well-conducted interview serves a number of important purposes:

1. It assesses the officer’s perspective regarding the reason for the referral.
2. It explores the officer’s personal and professional history for lifelong patterns of vulnerability or resiliency that are relevant to making predictions regarding the examinee’s ability to cope with the demands of the job.
3. It evaluates the officer’s mental status; symptoms of mental illness (for example, major depression, psychosis, and PTSD); personality problems (for example, impulsivity and rebelliousness); and other potential problems (for example, family or financial problems and alcohol or drug abuse).

Written Report

The final stage of the FFDE is to produce a written report that, according to the *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. 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. Depending on the referral questions, applicable law, and the agency’s policies and labor agreements, the reports may, upon request, also include other information, such as the officer’s prognosis and treatment options if found unfit for duty.

Possible Outcomes

Once the FFDE is complete, the examiner first and foremost provides an opinion as to whether the officer is fit for duty. If the officer is found unfit, and if requested by the agency, the evaluator may develop specific recommendations to restore the officer’s fitness, as well as treatment options. A number of authors have suggested varying frameworks for describing an officer’s fitness that share several common categories:⁴²

Fit for duty. These officers show no significant psychological condition or impairment that would render them unable to carry out essential job functions. Although these employees may have some psychological issues, they either are not likely to affect their ability to safely and effectively perform job duties or their issues are not due to a psychological condition or impairment. Example: An officer is observed to be distracted and tearful in a patrol vehicle, but no major performance problems have been noted. On examination, the officer says that a few weeks ago, the officer was dealing with a messy divorce, but it has now been resolved and the officer is back to the usual level of coping.

When there are workplace problems that do not appear to be due to the presence of a mental condition or impairment, the officer may be referred back to the agency for administrative coaching, counseling, education and training, or disciplinary action. For example, an officer is consistently late, takes excessive absences, is careless with equipment, and accrues an inordinate number of citizen complaints. The FFDE shows evidence of some rebellious and self-centered personality traits that do not rise to the level of a psychiatric impairment. The examiner recommends that the agency deal with these problems in a manner consistent with any other employee whose work behavior is below standard.

Unfit for duty. These officers are unfit for duty because of an underlying mental condition or impairment that prevents them from working safely and effectively. This might be due to a personality disorder, the effects of a traumatic brain injury, a severe mood disorder that is unresponsive to treatment, a substance abuse problem that continues despite best efforts at intervention, or other mental health conditions. For example, an officer sustained a traumatic brain injury while intoxicated off-duty. The officer’s work behavior has become erratic and the officer’s alcohol use has increased since the injury. The officer refuses all efforts at rehabilitation and insists that there is no problem and that the department is being

unnecessarily aggressive.

It also is possible that an officer, although currently unfit, is amenable to treatment that could restore the officer to fitness, suggesting a favorable prognosis. In such cases, if the agency requests remediation recommendations from the FFDE evaluator, the employee and agency should consider authorizing the FFDE examiner to provide the treating clinician (that is, a psychotherapist or a psychiatrist) with the basic findings of the FFDE and the goals for restoration to fitness. After the recommended course of treatment, the officer may return for a posttreatment FFDE. The recommendations of that evaluation may include continuation of treatment, ongoing abstinence from alcohol or drugs, and periodic psychological follow-up for a specified length of time. The posttreatment FFDE should determine the officer's level of improvement and readiness to return to work. For example, a depressed, alcoholic officer agrees to participate in an alcohol recovery program, take prescribed antidepressant medication, and attend psychotherapy as needed. After three months, the officer is sober and the officer's mood is substantially improved. After the agency receives a letter from the officer's treatment provider indicating that treatment goals have been met, the officer is referred for a posttreatment FFDE. The results of this evaluation indicate that the officer is fit to return to work.

Invalid evaluation. These officers have failed to cooperate with the evaluation, have not been truthful, or have shown to be malingering or otherwise manipulating their responses to the psychological tests. In such cases, questions regarding fitness for duty cannot be answered within a reasonable degree of psychological certainty, and the agency may need to manage the officer through administrative action. For example, an officer attempts to convince the examiner that no mental health problems or work problems exist and shows improbable "perfect" test scores on all measures, indicating inconsistent or untruthful responding. Alternatively, an officer sits sullenly, arms crossed, and declines to answer relevant questions or answers them in an overly vague and evasive manner.

Recommendations for modified duty. As a general rule, unless specifically asked, the examiner should address conclusions only to the specific job to which the officer is currently assigned. If the agency would like an opinion regarding the officer's ability to take a light-duty or alternative position or needs information regarding potential accommodations, those opinions should be specifically requested and are often best provided separately, subsequent to the FFDE. Providing work modifications or accommodations or reassignment to another position, however, is solely the agency's decision. As the *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."

Conclusions

Officers who become emotionally distressed or manifest other symptoms or behaviors attributable to a psychological condition or impairment can present a danger to themselves or to others or may be rendered ineffective in performing their essential work functions because of their problems. To protect them, their coworkers, and the community, law enforcement agencies must have a means to determine if such officers have a psychological condition or impairment, and, if so, the likely consequences to their functioning on the job. A psychological FFDE provides such a process, and law enforcement agencies have both the right and the duty to use it, assuming the process meets professional and legal standards. While psychological treatment may be helpful to an impaired officer, it is not a substitute for an FFDE, which provides an essential tool to inform the agency what risks an officer may present—and, ultimately, whether or not an officer is capable of resuming required duties. Finally, when requested by a referring agency, the FFDE can help determine if psychological treatment is likely to restore an unfit officer to fitness and provide suggestions for workplace modifications or accommodations. ■

Notes:

¹Fitness-for-duty evaluations may be performed for any employee, civilian or sworn, with the criteria for determining fitness modified appropriate to the essential job requirements of a specific position. However, the discussion in this article is focused on sworn officers.

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- ⁵*Bonsignore v. New York*, 521 F. Supp. 394 (S.D.N.Y. 1981), affirmed 683 F.2d 635, 637 (2nd Cir. 1982).
- ⁶*Conte v. Horcher*, 365 N.E.2d 567, 569 (Ill. App. 1st Dist. 1977).
- ⁷*DeVilbiss v. Schade*, 186 Ohio App. 3d 441, No. 23484, Ohio App. 493, 2010 Ohio App. LEXIS 412 (2nd Dist. 2010).
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- ¹²*Id.*
- ¹³Stone, *Fitness for Duty: Principles, Methods, and Legal Issues*.
- ¹⁴IACP Police Psychological Services Section, *Officer-Involved Shooting Guidelines*, ratified at the 116th Annual Conference of the International Association of Chiefs of Police (Denver, Colorado, 2009), http://www.theiacp.org/psych_services_section/pdfs/Psych-OfficerInvolvedShooting.pdf (accessed June 9, 2011); and Herbert M. Gupton et al., "Support and Sustain: Psychological Intervention for Law Enforcement Personnel," *The Police Chief* 78 (August 2011): 92–97.
- ¹⁵IACP Police Psychological Services Section, *Psychological Fitness-for-Duty Evaluation Guidelines*, ratified at the 116th Annual Conference of the International Association of Chiefs of Police (Denver, Colorado, 2009), 1, http://www.theiacp.org/psych_services_section/pdfs/Psych-FitnessforDutyEvaluation.pdf (accessed June 9, 2011).
- ¹⁶James Turner and Michael Gelles, *Threat Assessment: A Risk Management Approach* (Binghamton, N.Y.: Haworth Press, 2003).
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³⁵ *Chevron v. Echazabal*, 122 S. Ct. 2045, 153 L. Ed.2d 82 (June 10, 2002), quoting 29 C.F.R §1630.2(r) (2001).

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