

Personal Injury Evaluations: The 5 Step Model We Use to Determine Causation and Damages

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Personal injury evaluations have become common place in personal injury and worker's compensation litigation. We get a lot of requests from personal injury attorneys to complete psychological or neuropsychological evaluations for their personal injury cases.

Psychological and neuropsychological damages (e.g. traumatic brain injury) in personal injury cases can be more complicated to evaluate than physical health-related damages. We wrote this blog post to help answer the common questions that come up in these cases.

The goal of this blog post is to:

1. Explain how we would complete a psychological or neuropsychological evaluation in a personal injury case.
2. Discuss the potential problems that attorneys need to be aware of when retaining an expert to complete a personal injury evaluation.

What's the purpose of a Personal Injury Evaluation?

Personal injury evaluations are forensic evaluations, meaning that there is a legal component to the evaluation. The findings are ultimately going to end up in court or deposition.

The goal of a forensic evaluation in a personal injury case is to do a pre and post-injury comparison to examine the impact of an event on a person's functioning and how this will impact them in the future.

This is very different than a typical clinical evaluation. The goal of a clinical evaluation is to assess a person's strengths and weaknesses, compare their abilities to people in the general population, and to develop a treatment plan.

This is why it's important to retain a psychologist or neuropsychologist with experience and training in forensic evaluations.

I want to also emphasize an important point: the treating psychologist should NOT be retained as an expert.

The purpose of retaining an expert is to complete an objective evaluation and provide an unbiased opinion. They're detached from the clinical issues because they evaluate and provide an opinion.

The role of a treating provider is to treat, support, and comfort. This can be problematic in a forensic evaluation because a forensic evaluation requires objectivity and it's neither a supporting or comforting experience. The nature of the evaluation creates an automatic conflict of interest for the therapist.

You can read about this case where a conviction was overturned on appeal because the therapist testified as a lay and expert witness.

How Do You Complete a Personal Injury Evaluation?

When we complete a personal injury evaluation, we evaluate the plaintiff at five points in time. The reasoning behind this is that we want to demonstrate how the event impacted and harmed the person.

Here are the five points in time that we would look at:

1. Functioning PRIOR to the alleged injury
2. Functioning DURING/ JUST AFTER the alleged injury
3. Functioning BETWEEN INJURY and EVALUATION
4. Functioning at the TIME OF THE EVALUATION
5. Functioning in the FUTURE

Here is a detailed breakdown of each of these points:

Functioning PRIOR to the alleged injury:

It's important to establish how the plaintiff was functioning PRIOR to the injury. This is known as establishing a "baseline".

Establishing a plaintiff's baseline allows us to determine if they have pre-existing impairments or vulnerabilities.

We want to know how they were functioning before the alleged injury and their strengths and weaknesses. This is important because the defendant is liable for injuries that were caused by the defendant's conduct.

How do we establish this?

We interview the plaintiff and collateral sources (e.g. spouse, children, close family, friends, co-workers) that can provide us with information about the plaintiff's functioning.

Imagine if the plaintiff had healthy relationships, was successful and working full-time, had no pre-existing mental health or physical health symptoms, and wasn't using drugs or alcohol.

This is someone that has a solid and healthy baseline. Now imagine they experience some sort of injury (e.g. sexual assault at their job). They will likely experience some level of distress as a result of this event and might have impairment in one or more areas of their daily functioning.

Having an understanding of their baseline level of functioning gives us an opportunity to do a pre and post-injury analysis to determine how the event impacted the plaintiff.

Functioning DURING/ JUST AFTER the alleged injury:

It's also important to ask the plaintiff about their recollection of the incident. It's not our job to determine if the incident happened.

Our job is to understand their reaction to the event and if their reaction is consistent with the nature and severity of the incident.

Some events can happen once and last a brief moment (e.g. an auto accident) while others could take place over weeks, months, or years (e.g. sexual harassment).

We can also compare the plaintiff's recollection and thoughts about the event and compare it to other data to determine if their recollection is accurate.

For example, it's reasonable that a plaintiff will experience a decrease in functioning and have a severe reaction after a traumatic incident like a sexual assault.

It's unreasonable that a plaintiff will have a decrease in functioning or have a severe reaction after being in a minor fender-bender traffic accident.

Functioning BETWEEN INJURY and EVALUATION:

We also want to give the plaintiff an opportunity to describe the physical, emotional, interpersonal, and cognitive impact they experienced AFTER the incident leading up to the day of the evaluation.

We want to document the plaintiff's emotional and functional deficits AND document if they were able to use their strength and resiliency to try to overcome their problems.

In some cases, it's possible for the plaintiff's social and family relationships to improve because their family and friends want to help and support them during this time.

For example, if a plaintiff was sexually harassed or assaulted, they might start withdrawing

from certain people (e.g. co-workers or friends) but they might get closer to others (e.g. spouse or immediate family).

An interview with the plaintiff and collateral sources will help us determine a chronological account of post-injury functioning to see if the plaintiff is improving, getting worse, or staying the same.

Throughout the interview process, we're gathering information to determine if the alleged deficits are consistent with what would be expected given the nature of the alleged injury.

For example, if a plaintiff claims that they have PTSD symptoms after a fender-bender traffic accident, we would look at their alleged deficits and see if the deficits would be possible given the severity of the event they experienced.

By determining the extent of the injury, we can also determine what they would need to recover and track their path to recovery.

Functioning at the TIME OF THE EVALUATION:

This point is the most accurate part of the evaluation because it's being done in real-time. On the other hand, it's also the least important because it's only a snapshot in time.

This is still an important point in the evaluation because we are able to talk to the plaintiff, observe their behaviors, and administer objective psychological or neuropsychological tests to determine how they are functioning.

The information we gather at this point helps us tie in other parts of the evaluation and make sense of the bigger picture.

Functioning in the FUTURE:

If a plaintiff is still experiencing problems because of the defendant's conduct, we have to determine how much time and treatment they would need to be at their pre-injury level of functioning.

The evaluation can provide information on how far the plaintiff has come in treatment and how much more treatment they would realistically need. We would look at the progress they've made, the severity of the injury, and use our professional judgment to determine what additional help they would need in the future.

For example, if the plaintiff was the victim of a sexual assault, they will likely need on-going individual or group therapy for an extended period of time.

If the plaintiff experienced a moderate to severe traumatic brain injury, they will likely need cognitive rehabilitation services.

Why Do You Need to Interview Collateral Sources?

This is an area that's very different from a typical clinical psychological or neuropsychological evaluation.

In a forensic evaluation, it's standard practice to gather and analyze data from a variety of sources. You can't rely on the information that is only provided by either the plaintiff or defendant.

It would fall under the standard of care in forensic psychology if we didn't use multiple sources of information before coming to an opinion.

There are two sources of collateral information:

- Interviews
- Record review

Collateral Interviews

We would want to interview persons that have significant contact with the plaintiff. In an ideal world, we would interview collateral sources that can provide objective information regarding the plaintiff's functioning.

For example, the plaintiff's family will likely not provide an objective report compared to the plaintiff's co-workers, employees, supervisors, etc....

In the real world, we aren't going to be able to interview all of these people but we can at least try to interview a couple of them.

Here is a list of the people we would consider interviewing:

- Employers
- Co-workers
- Employees
- Business contacts
- Prior therapy providers
- Treating physicians
- Witnesses
- Family members
- Roommates
- Neighbors

Collateral sources of information can help us determine how the plaintiff was functioning before the event, how they were functioning right after the event, and how they are functioning now.

The goal of interviewing collateral sources is to have an objective account of the plaintiff's pre and post-injury functioning.

Collateral Documents:

Collateral documents can help either corroborate or disprove a plaintiff's report of injury and functional deficits both pre and post-injury. We always encourage attorneys to provide us with collateral documents to help us complete a more comprehensive evaluation.

Here are the types of documents that we could review:

- Financial Records: Financial records can indirectly tell us about the plaintiff's activity level and what they've been doing. It can also help corroborate any financial problems they are having due to the incident.
- Education and Employment Records: These records can help us determine the plaintiff's level of functioning before the incident. They can also help corroborate or disprove information related to the incident. For example, work performance evaluations or school transcripts can provide helpful information about how a plaintiff was functioning before the incident. The plaintiff could have been successful at their job and now they are struggling to keep up with the demands of their work.
- Health and Legal Records: These records can provide helpful information about the plaintiff's pre and post-injury functioning. Examples of health-related records include medical records, hospital records, psychotherapy records, and prior psychological evaluations and reports. Legal records like police reports, photos of the accident scene, prior legal claims, private investigator reports, witness statements, and deposition transcripts are also helpful.

How Do You Establish Causality in a Personal Injury Evaluation?

As a forensic psychologist, our job is to integrate all of the information we've obtained through interviews, record reviews, and objective psychological tests into a written report.

A jury or judge will eventually review our findings and will have to come to their own conclusions.

By looking at the plaintiff's baseline level of functioning, we can compare they're previously functioning to their current functioning. We can also look at their current self-reported symptoms and presentation to determine if what they're reporting is credible and

reasonable.

It'll be easier to provide an example to illustrate this.

Case Example

Ms. Jones is a 40-year-old insurance agent at a large insurance company. Her supervisor makes unwanted sexual advances towards her and inappropriately touches her once. She reports him to HR and he is fired.

Over the next several months, Ms. Jones starts to feel depressed, has trouble sleeping, feels anxious and hypervigilant around male co-workers, and her work performance starts to suffer. She continually re-experiences and re-lives that moment over and over in her head.

She has not been able to return to work, has exhausted all of her leave time, and no longer has income coming in. If she can't return to work, she will start having serious financial problems in the next several months, which is causing her additional stress and anxiety.

Do these symptoms make sense? Can someone experience these intense feelings because of one incident?

Yes, they can!

It turns out that Ms. Jones has a history of trauma, sexual abuse, and physical abuse as a young teenager. She was physically abused and raped by a close relative. She had been seeing a therapist for over 5 years and had finally learned to cope with her symptoms. She stopped seeing her therapist one year ago.

This case example highlights the principle of the **"eggshell skull"**.

This principle says that you take the victim as you find them. It holds the defendant liable for all consequences resulting from their activities leading to an injury to another person, even if the victim suffers an unusually high level of damage due to a pre-existing condition.

On the surface, Ms. Jones' reaction might seem out of proportion to what she experienced. When you take into consideration her history, her reaction makes more sense.

She had a prior history of trauma that had been successfully treated and but the actions of her supervisor caused her to present with various mental health symptoms.

How Important Is It to Have a Diagnosis?

Attorneys will often ask us to complete a personal injury evaluation to see if their clients meet the diagnostic criteria for a mental health condition that's listed in the DSM-5.

It's a valid question but it **doesn't matter if the client does or does not meet the criteria for a diagnosis.**

What's more important is the functional impairments that are being caused by the symptoms the plaintiff is experiencing.

Our job during a personal injury evaluation is to determine whether and to what degree the plaintiff was impacted by the actions of the defendant.

We are asked to determine their pre-injury functioning, current functioning, any vulnerabilities that were present before the injury (e.g. prior history of trauma), and how their present functional deficits were caused by the incident as opposed to other factors.

We use this information to extrapolate what combination of time or treatment will be needed to return them to how they were before the injury.

For example, in Ms. Jones' case, she might not meet all the criteria for PTSD because she does not have all of the symptoms associated with PTSD.

If you look at her **symptoms**, you'll see that she is experiencing **functional impairments** in several areas of everyday functioning.

Plaintiffs are not compensated for having a diagnosis, they are compensated because they are experiencing functional and emotional impairment that was caused by the conduct of the defendant.

Conclusion

The goal of a forensic evaluation in a personal injury case is to do a pre and post-injury comparison to examine the impact of an event on a person's functioning and how this will impact them in the future.

We do this by collecting and analyzing data from a variety of sources including interviews with collateral sources, reviewing records, and interviewing and administering psychological or neuropsychological tests.

In a personal injury case, the diagnosis is not important because plaintiffs receive compensation for the functional and emotional impairment that they are experiencing due to the actions of the defendant.

We're hoping that this blog post helped answer how we conduct a psychological or neuropsychological evaluation in a personal injury case.

[You can click this link to learn how to retain us to complete a personal injury evaluation.](#)