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MALINGERING

A Basic Introduction

Malingering: A Basic Introduction For Clinical and Forensic Professionals

Situations of civil and criminal litigation involve high stakes that may tempt defendants to create, distort, or exaggerate the presentation of a variety of symptoms in order to avoid a potential consequence perceived as negative. Termed *malingering* in the field of forensic psychology, this phenomenon is (a) the conscious, intentional fabrication of mental health and/or physical dysfunction (b) for the sake of personal gain; feigned symptoms may include (but are not limited to) learning and physical disabilities, dementia, severe amnesia, perceptual disorders, and neurological and psychiatric conditions (Dean et al., 2008; Batt et al., 2008; Browndyke et al., 2008). One important factor distinguishing malingering from other mental health concerns (such as the so-called factitious disorders) is the seeking of externalized personal benefits commonly referred to as “secondary gains” (Rogers, 2008). These may include financial compensation, reductions in criminal culpability, avoiding military duty, avoiding work, or obtaining drugs (American Psychiatric Association, 2013).

The accurate and repeated assessment of malingering in a criminal justice setting is vital because the extent to which an offense may be prosecuted (as well as the defendant’s ability to participate in his or her own defense) is protected by law. For instance, the 1843 case against Daniel M’Naghton (who killed a man he believed to be the prime minister of Great Britain) called into question if a person may be held legally responsible if the person both knew what he or she was doing and knew that it was wrong. The 1960 case of Milton Dusky extended the argument by contending that the person not only must understand the charges against him or her but also have the ability to aid his or her own defense attorney. For example, defendants facing the death penalty may feign an intellectual disability in order to reduce the possibility of maximum sentencing while others may feign similar symptoms in an attempt to simply prolong the judicial process.

The mere possibility of the presence of a mental disorder or low intelligence may prompt judges and attorneys to request competency evaluations and time-intensive competency restoration services, which may take place in mental health treatment facilities rather than in relatively more confining (and therefore most displeasing) correctional facilities until capacity issues are determined and/or treated. Trial delays extend the time during which the individual is considered a detainee—and therefore reduces time as an inmate; in most states, the personal benefits of such status may include extended phone privileges, additional visitation rights, higher levels of constitutional protection and/or the right to vote, among others. Following sentencing, inmates may be motivated to feign any number of symptoms in order to obtain a wide range of benefits while incarcerated (Edens, Poythress, & Watkins-Clay, 2007). The benefits range from modified living arrangements, to prescribed drugs (some of which have the potential for abuse or sales to peers), to the social reward of additional attention from mental health staff.

Malingering is not limited to criminal defendants as it includes individuals involved in civil litigation as well. Cases of financial disability lawsuits, child custody disputes, or even upcoming military deployment may also incentivize individuals to feign disorder or impairment. In fact, the concept of malingering was born out of a military context (Lande, 2003). The personal benefits sought include increasing financial compensation, reducing culpability, and avoiding job-related duties. Using the commonly accepted “magical number” of 40% (+/-10) to represent the average base rate (or prevalence) of malingering in individuals involved in medicolegal cases with an external incentive, Chafetz and Underhill (2012) estimated that the combined cost of adult malingered mental disorders in 2011 to the Supplemental Security Income (SSI) program and Social Security Disability Insurance program was \$20.02 billion.

Often individuals who malingering rely on subjective aspects of a disorder’s diagnosis that require self-reporting. For example, everyone has experienced physical pain in the past, so feigning the presentation of physical pain can be rather easy (Rogers, 2008). Although clinical assessment measures cover a wide array of both medical and interpersonal data, they are necessarily largely objective. In order to combat this discrepancy, measurements include scales of under- and over-reporting of mental disorders (i.e., response bias), feigned cognitive impairment, common ailments, debilitating symptoms, or systemic diseases (Rogers, 2008). The detection of malingering is particularly complex. Interpreting clinicians should have a strong clinical background in deciphering malingering response styles and target symptom presentations (Richter, 2014). Psychologists caution that the social and psychological stigmas are of great concern in cases that involve false positive results where the clinical opinion of malingering is offered when, in fact, the individual may not be malingering or may be doing so without willful intent to deceive—supporting why the diagnosis is so infrequently applied.

Best practices for clinicians include using a multi-method approach that may include a combination of behavioral observation, collateral sources, tests of effort performance, generalized personality tests with embedded internal validity scales, and thorough clinical interviews. A distinction is made when discussing the assessment of an individual’s self-report (i.e., whether the examinee is providing an accurate report of his or her actual symptom experience) and when attempting to gauge whether the individual is providing an accurate measure of his or her actual abilities (e.g., on a test of learning and memory) with the former being referred to as symptom validity testing and latter designated as performance validity testing. These terms are suggested to replace less descriptive terms such as response bias or effort (Larrabee, 2012).

Summary

In conclusion, malingering of mental health or physical symptoms with the conscious goal of obtaining an external incentive is prevalent in criminal settings. The detection of malingering requires sound clinical acumen combined with a multi-method assessment approach to reduce the likelihood of false positive decisions and to increase the likelihood of properly identifying those individuals attempting to intentionally feign symptoms for the purpose of secondary gain.

Biographies

Jerrold Brown, M.A., M.S., M.S., M.S., is the treatment director for Pathways Counseling Center, Inc. Pathways provides programs and services benefiting individuals impacted by mental illness and addictions. Jerrod is also the founder and CEO of the American Institute for the Advancement of Forensic Studies (AIAFS) and the lead developer and program director of an online graduate degree program in Forensic Mental Health from Concordia University, St. Paul, Minnesota.

Julia Besser, M.A., is a former humanitarian aid worker who is currently earning her Ph.D. in Psychology with a focus on corrections and policy making. She teaches undergraduate coursework in psychopathology and cognition and serves as a graduate senator at Texas Woman’s University. Her current research studies focus on moral disengagement and the punitive criminal dilemma.

Adam L. Piccolino, Psy.D., ABN, is a board-certified neuropsychologist with over 18 years of providing direct clinical services in corrections. Dr. Piccolino has lectured locally and nationally on a variety of topics including the identification and management of traumatic brain injury, dementia, and other neurocognitive disorders within an offender population.

Franco Peric, Psy.D., has over 10 years of experience in a variety of correctional and mental health settings and is currently completing his post-doctoral residency. He has lectured at national conferences and his current employment involves the assessment and treatment of adult male sexual offenders.

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