

Psychological Fitness-For-Duty Examinations: Practical Considerations for Public Safety Departments

Gary L. Fischler, Ph.D.
Minneapolis, MN

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2001, Volume 1, pages 77-92

Police officers with known or suspected psychological or behavioral problems often present complex issues for administrators. For example, an officer who was once a productive and respected member of a department now shows a distinct change in behavior or attitude that is confusing, frightening, or irritating to his or her supervisors and coworkers. Such an officer can have a profound effect on public safety as well as organizational effectiveness, productivity, and morale. Once a problem officer has been identified, a public safety department must exercise due diligence in order to protect itself from liability for the officer's actions, as well as to protect the officer, the public and other officers from potential harm. In addition, the department often has deep personal concern for the officer and wants to save his or her career if at all possible.

When a police officer or other public safety employee has a personal, psychological, or behavioral problem that is affecting the workplace, it can raise difficult questions such as: Can the employee work safely under routine conditions? Can he or her work safely in critical situations or under high levels of stress? Do I, as an administrator, have the right to order an employee to take a psychological exam? If I discipline the employee for poor performance or conflicts with other workers, is that a violation of the Americans with Disabilities Act (ADA)? Should I refer him or her for counseling?

While there is often a clear connection between psychological problems and workplace functioning, dealing with these issues requires a clear understanding of the problems involved, what workplace behaviors are affected, what workplace modifications may be available, and what mental health interventions would be appropriate (Fischler, 2000; Fischler & Booth, 1999). A psychological fitness-for-duty (FFD) examination can help a public safety administrator by providing information that will help to clarify these issues and answer questions arising from them.

Common Behavioral Red Flags

Leading to FFD Referrals Most concerns leading to FFD exams are generated from observed workplace behaviors, though they may arise from information obtained about a person from outside sources as well. Stone (1995) found that excessive force issues accounted for 19% of police FFD referrals. These can include a pattern of citizen complaints or one especially egregious complaint. Allen, Hibner, & Miller (2000) found that about 29% of FFD cases were classified as resulting from "workplace violence," which could mean violence against citizens, violence against coworkers, or violence against the officer in question. Obviously, prediction and prevention of future violence can be a major reason to conduct an FFD exam.

Generally, a marked negative change in an officer's demeanor or job performance may signal the need for an FFD. Such changes may include a pattern of interpersonal conflicts with coworkers or supervisors, insubordination, excessive use of sick leave, being on duty while intoxicated or hung-over, a pattern of poor judgment, sexual inappropriateness, bizarre or threatening behavior, or a high rate of errors. These workplace behaviors do not necessarily indicate that the officer has a psychological problem, but they may provide probable cause to investigate further through an FFD exam. Sometimes, an officer will confide to a coworker or supervisor that he or she is having a personal problem that is affecting his or her ability to work and feels the need for help. For example, employees may recognize that they are having family or alcohol problems that are making them more irritable, depressed, or anxious, leading to more conflicts or errors at work. Sometimes an officer will describe symptoms of posttraumatic stress disorder (PTSD), which are affecting his or her willingness to go to certain types of calls or engage in high-risk situations.

Often, the underlying psychological correlates of a workplace problem are unclear to an administrator. It is a good policy to discuss the situation with the department's consulting psychologist (or other police psychologist) to determine if there is sufficient reason to suspect an underlying psychological problem before formally ordering the exam. This is most useful if the psychologist has the opportunity review the employee's personnel file, or at least obtain a summary of his or her past job performance. Obviously, not all substandard performance issues are the results of psychological problems. For example, poor morale, low motivation, or an inadequate level of skill may be at the root of problematic behavior. Often supervisory coaching or discipline would be a more appropriate intervention than a FFD exam. Sometimes a person is just not cut out for law enforcement and should not have been hired in the first place.

Other administrative concerns may be generated from reports of problems outside of the workplace. Such a situation can raise a number of issues related to personal privacy and appropriate work-life boundaries. Police departments are advantaged over their civilian counterparts by their ability to do internal investigations of alleged problems that occur outside of work. However, a great deal of discretion by the administrator is necessary so that every unsavory rumor about an employee does not come under public scrutiny.

Once the investigation or an admission by the officer has indicated that there is indeed a problem, the administrator must decide if the problem warrants discipline (e.g. conduct unbecoming an officer) and/or an FFD exam. Especially egregious behavior clearly calls for an FFD exam before the officer returns to work even if there have been no previous problems with work performance. Such behavior might include suicidal or homicidal threats, extremely inappropriate use of force, inappropriate use of alcohol (for example, being arrested for DWI while off-duty), any illegal drug use, or domestic abuse. Self-reported symptoms of anxiety or depression such as insomnia, loss of appetite, confusion, increased irritability, fatigue, nightmares, or loss of interest or initiative, when of sufficient intensity, may also be red flags which would warrant an FFD exam, even in the absence of work-related performance problems. The goal here is to prevent a problem that can be foreseen or should have been foreseen.

Definition and Goals

An FFD exam initially seeks to answer two questions. First, does an employee have a psychological problem; and second, can he or she perform his or her job in a safe and effective manner? Both conditions must exist for an employee to be found unfit for duty.

That is, if an employee has a psychological problem but no work problems (or clear potential for work problems) then he or she may be referred to mental health treatment, but could continue to work without restriction. In this case, the employee would not be compelled to such treatment and it would be at his or her discretion. Conversely, if there are work related problems, but no psychological problems, the issues should be handled through remedial or disciplinary channels.

An FFD exam, by definition, is performed only on incumbent personnel, and is therefore distinctly different from a pre-employment psychological exam (e.g. Fischler, 1997; Fischler, 2001; Hibler & Kurke, 1995; International Association of Chiefs of Police Psychological Services Section, 1998a, 1998b). In addition, while pre-employment exams may be used to screen for undesirable personality characteristics or other psychological issues that might negatively affect job performance, an FFD exam is generally narrower in scope and seeks to discover whether or not a psychological problem or symptoms of a psychological disorder as described by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV; American Psychiatric Association, 1994), are responsible for the employee's work problems or potential problems. Finding that an officer's current problems are related to "stress," for example, is probably insufficient to conclude that he or she is unfit for duty. If there are no true psychological problems, the employee should generally be handled through disciplinary channels.

While FFD exams are probably more common in public safety occupations than they are in lower risk occupations, due to the potentially dire consequences of having unfit officers on duty, any employee can be referred for an exam. However, the practice is not limited to public safety departments and can be performed in any occupational group (e.g. Fischler, 2000). In public safety departments, unsworn employees, such as dispatchers, transcribers, and community service officers, for example, may be referred if there is reason to believe that the employee cannot perform his or her job in a safe or effective manner due to a mental health problem.

The FFD exam itself is not disciplinary in nature, although it may be seen that way by employees who are being compelled to complete the exam. In addition to being compelled to be examined, there may be disciplinary consequences for whatever issue precipitated the exam, and potentially, for refusal to cooperate with the exam. In some cases, where the behavior in question is not egregious, or where the extent of the suspected mental health disorder is not severe, the FFD exam can be used as an alternative, or diversion, to discipline. For example, an officer with an otherwise good work history pulls his gun and threatens a suspect inappropriately. The chief might send the officer for additional use-of-force training, or choose to discipline the officer, perhaps with a reprimand or suspension. Alternatively, if the chief believes that the officer has been under excessive stress lately such as marital problems, or has seemed otherwise irritable or out of sorts, he or she can offer to send the officer for an FFD exam instead of evoking the discipline, as long as the officer agrees to abide by the results of the exam. In such a case, the chief recognizes that there may be other problems underlying the recent behavior, which, if addressed and corrected, would help the officer in the long run more than a disciplinary consequence, would. Such a diversion would be inappropriate where there are clear underlying psychological issues that raise serious doubts about the ongoing safety of the officer or others, or where the seriousness of the offending behavior compels discipline. In those cases a chief may not have the discretion to forego either the exam or the discipline.

Possible Outcomes

There are a number of possible outcomes to an FFD exam. An illustration of the decision tree used in the FFD exam process, including potential outcomes, can be found in figure 1. In one scenario, the examiner may conclude that the employee does not have a significant psychological problem. In this case, he or she is psychologically fit for duty and should be referred back to the appropriate departmental administrator to determine the need for remediation, training, coaching, or disciplinary consequences. It is important to realize, however, that such an employee may still have personal problems, such as family concerns or being spread too thin by too many commitments. The examiner may recommend help such as family counseling or advise the employee to cut back on other activities, but the ultimate decision to follow this advice rests with the employee.

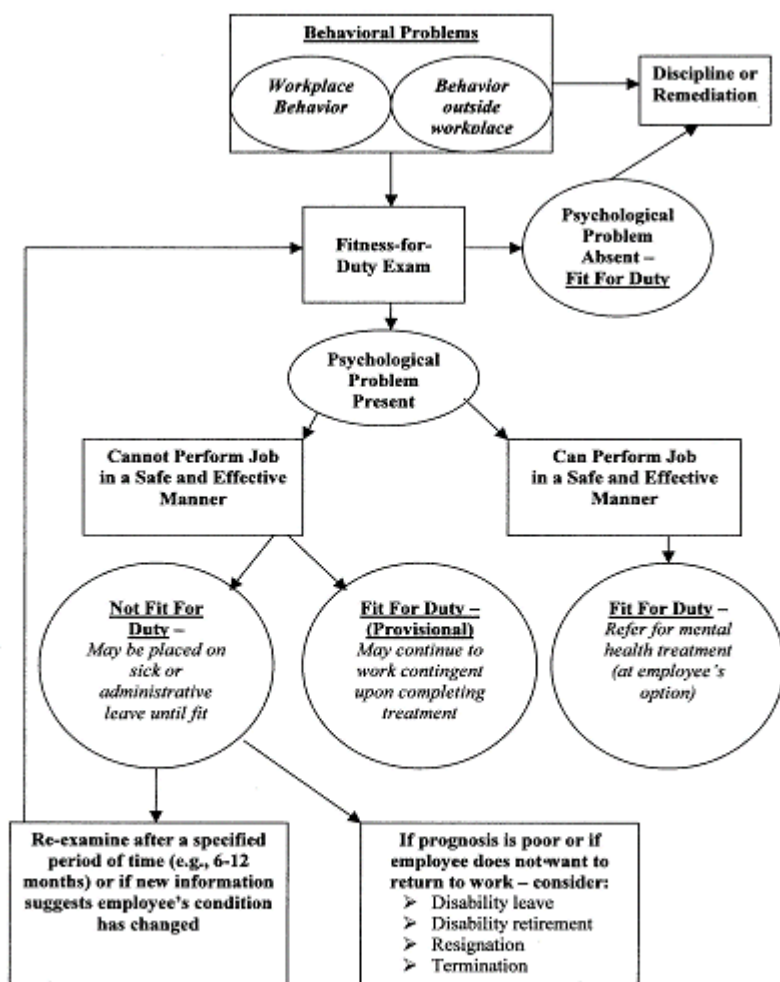


Table 1. Possible outcomes for FFD examinations.

It is also not uncommon for some officers to have mild to moderate level personality characteristics which, while negatively affecting work performance, are not of such severity as to be classified as personality disorders, and therefore, probably would not render the individual unfit for duty. Examples of such characteristics might include shyness or unassertiveness, rigidity, self-centeredness, authoritarianism, or indecisiveness. Since personality problems generally begin early in adulthood; under ideal circumstances, they should be identified at the pre-employment psychological examination. If they were not, the employee may have mild, but chronic, adjustment problems at work. The

remediation/disciplinary path is the most appropriate for this individual. Psychotherapy may also be helpful and might be recommended by the FFD examiner. The officer may not agree to follow this advice, but eventually would probably face significant disciplinary problems if his or her performance does not improve. If the examiner determines that a psychological problem or disorder is present, it will probably fall into one of three broad categories – clinical syndromes, personality disorders, or cognitive disorders. Clinical syndromes include anxiety disorders, depressive disorders, PTSD, and substance abuse/dependency. Symptoms such as sleep or appetite disturbance, concentration problems, fatigue and lethargy, low self-esteem, and avoidance of stressful situations are often involved with these disorders. Rarely, an officer may have a psychotic disorder with symptoms such as paranoia, delusions, or hallucinations. Clinical syndromes often have a favorable prognosis with the right type of treatment, which typically includes some combination of medication and psychotherapy. A variety of stressors, both work and non-work related, can bring on clinical syndromes. Often the affected individual has a biologically or genetically based predisposition for the problem, which, when combined with situational stressors, result in significant mental health symptoms.

Personality disorders are defined as maladaptive ways of perceiving the world, relating to others, and controlling impulses. They are chronic, pervasive, and ultimately self-defeating. Individuals with personality disorders often believe that there is nothing wrong with them, or if there is, it is someone else's fault. Depending on the specific disorder, affected individuals can show a wide variety of problems, including dishonesty, poor judgment due to inability to control impulses, manipulateness in relationships, suspiciousness or hostility towards others, having too much or too little concern over details, failing to take independent action when appropriate, and showing too much or too little concern over what other people think. Long-term psychotherapy can occasionally be helpful for people with personality disorders, but the prognosis for change is usually guarded. Since personality disorders begin in adolescence or early adulthood, they may be identified in the pre-employment screening exam. However, sometimes symptoms of a personality disorder can lie in a dormant state until a set of events (e.g., conflict with a supervisor, breakup of a relationship) triggers their emergence.

Cognitive disorders involve deficits in memory, general intelligence, problem solving, and reasoning. They are often related to acquired neurological damage due to a number of possible causes such as stroke, head injury, chronic alcoholism, brain tumor, early onset dementia (such as Alzheimer's), or other medical etiologies. Occasionally, an individual can recover from the acute effects of head injury or stroke through time and cognitive rehabilitation. More typically, however, once someone has been diagnosed with an acquired cognitive disorder, he or she would rarely be able to recover sufficiently to work as a public safety officer again.

Milder cognitive disorders can include learning disabilities and attention-deficit disorders. Depending on the severity, individuals with these disorders can sometimes work in the public safety field. Since these disorders have an onset in early childhood, they would usually be identified during the preemployment exam. However, sometimes the full impact of one of these disorders on job performance is not recognized until the employee is actually working at his or her assigned duties over an extended period of time.

Having determined that a psychological problem exists, the examiner then explores whether or not it is likely to interfere with the employee's ability to perform his or her job safely and effectively. Some serious disorders, such as major depression with suicidal

ideation, severe PTSD with frequent flashbacks or unwanted recollections of the traumatic event, active alcohol dependence, certain personality disorders such as antisocial or paranoid types, and most cognitive disorders, would generally not allow safe and effective performance of law enforcement duties, and the officer should continue to be on leave until he or she recovers sufficiently to return to work or decides to pursue other options such as disability leave, disability retirement, or resignation. Medical leave may be continued for as long as departmental policy permits. If and when the employee believes that he or she has recovered sufficiently to return to work and his or her treating doctor or therapist is in agreement with this, then he or she should be referred for a second FFD exam with the original departmental examiner or other independent examiner. Since significant role conflicts and potential conflicts of interest often occur when the FFD examiner is also the treating doctor or therapist (Fischler, 2000; Greenberg & Shuman, 1997), the treating clinician should generally not make the final FFD decision, and therefore, a second FFD exam with the departmental or other independent examiner becomes necessary.

Sometimes the question arises as to whether it is possible to send a dysfunctional employee back to work with restrictions or "reasonable accommodations" under ADA. In our experience, it is rare that a seriously emotionally disturbed or personality disordered police officer can fulfill the "essential functions" of the job with or without accommodations or fulfill the "business necessity" of the organization. Furthermore, there are no known accommodations that would allow such an individual to fulfill certain job duties such as carrying a gun, making split-second decisions in critical situations, or placing him or herself or others in potentially dangerous situations. If the officer is only mildly disturbed, modifications such as time off for doctor appointments, flexible scheduling, or changes in supervisory methods may assist him or her to make a satisfactory return to work. More radical accommodations, such as reassigning job duties or providing closer supervision may be achievable with personnel other than sworn officers, because the public safety issues are not as direct. Sometimes an officer is placed on "light duty" which is often clerical and non law-enforcement in nature. While perhaps beneficial for the officer, such a placement is probably not required under ADA because the employee is not able to function in his or her own job with or without reasonable accommodations. However, specific guidance on these issues should be obtained by the department's legal advisor.

If the psychological problem is mild and the prognosis is favorable, the potential work problems are likely to be less pernicious. For example, if the employee has a mild depression or anxiety disorder, he or she may be somewhat unproductive, occasionally irritable with coworkers or the public, or show sporadic instances of questionable judgment. Life-threatening consequences in this case are unlikely. Therefore, he or she may be found provisionally fit for duty and continue to work contingent upon entering and completing appropriate mental health treatment. In this case either the FFD examiner or the department should follow up to verify that the employee is taking the steps recommended by the examiner.

It is also possible that, although the employee has a psychological problem, it is not of sufficient severity to cause significant work-related problems. This might be the case with an acute adjustment disorder in response to the breakup of a relationship or the loss of a parent. In such cases the employee may be somewhat depressed, anxious, worried, or tired, but the condition is not of sufficient severity to significantly affect work performance. The examiner may then decide that no additional treatment is necessary and the employee may unconditionally return to work, or he or she may decide that additional treatment would be clinically useful, but not mandatory for the employee to return to work.

FFD Exams: Recommended Practices

As Benner (1997) describes, there is no one universally accepted method or set of criteria for conducting an FFD exam. However, the IACP Police Psychological Service Section (1998a) guidelines, as well as descriptions of practice in a number of contexts (e.g. Allen et al., 2000; Benner, 1997; Fischler, 2000; Hibler & Kurke, 1995; Stone, 1995), provide a general consensus that seems to have developed around the standard of practice. A fair and comprehensive examination should generally have the following elements: 1) a review of available collateral information; 2) psychological testing; and 3) an in-depth interview. In addition, examiners should have specialized knowledge of public safety assessment techniques.

Collateral information may include personnel records, medical records, internal investigation reports, and family interviews. To the extent possible, records should be reviewed prior to the examination. While an objection may sometimes be raised that having access to these records could bias the examiner, these concerns are generally outweighed by the value of such information with regard to being able to appropriately focus the exam, and raising and resolving inconsistencies that may exist between the records and the employee's self-report. A general rule of thumb is that the more complete the information to which the examiner has access, the more accurate will be the findings.

Personnel records may include documentation of critical incidents, memos from supervisors or coworkers regarding their observations or problems they have experienced with the employee in question, and a history of the employee's performance record. Personnel records can usually be obtained prior to the examination. Within the current context, the medical records of primary interest would be those related to mental health evaluation or treatment. They can come from psychologists, psychotherapists, psychiatrists, or other medical doctors who are involved in the employee's mental health treatment. If there are psychological adjustment issues related to a physical injury or condition, then medical records related to those may also be reviewed. Medical records must usually be obtained with the written consent of the examination subject. It is generally preferable for the examiner to obtain medical records directly from the medical provider, thereby insulating the employee from an additional violation of privacy that would occur if the employer would have direct access to those records. Finally, interviews with family members or other concerned parties may be helpful to assess the employee's ability to function in non-work related contexts, and to get a better understanding of the history of the employee's problems or issues. Such interviews should be performed with the employee's permission, after the examiner has had an opportunity to interview the employee.

Psychological testing is the second major component of the FFD exam. Testing is critical to the process in order to lend objectivity, comprehensiveness, and defensibility to the process. This usually includes objective personality tests such as the Minnesota Multiphasic Personality Inventory – Second Edition (MMPI-2; Butcher, Dahlstrom, Graham, Tellegen, & Kaemmer, 1989), the Millon Multiaxial Clinical Inventory – Third Edition (MCMI-III; Millon, 1994), and the California Personality Inventory (CPI; Gough, 1996). Some psychologists may also use the Rorschach Inkblot Test (Exner, 1993). Cognitive tests, such as the Shipley Institute of Living Scale (Zachary, 1986) can be used to screen for intellectual or memory problems. If abnormalities are discovered or if there are other reasons to think that the employee may be suffering from cognitive problems, more comprehensive tests, such as the Wechsler Adult Intelligence Scale – Third Edition (WAIS-III, Wechsler, 1997a),

the Wechsler Memory Scale- Third Edition (WMS-III; Wechsler, 1997b), or other specialized neuropsychological tests may also be useful.

Finally, the in-depth personal interview gives the employee an opportunity to describe the problems from his or her perspective, and allows the examiner to obtain a psychosocial history and conduct a current mental status examination. The examiner has the opportunity to try to reconcile differences between what the employee may describe, and the information that has already been provided by the department. The psychosocial history should include information related to education, employment history, mental health treatment, substance use, legal problems, physical health concerns, and family history (including family or origin as well as current family or significant other constellation). Some interview questions may be related to ethnic and gender bias, if this is an area of concern. The mental status examination evaluates the presence of psychiatric symptoms through direct observation (e.g., the employee is very tearful, lethargic, disorganized, etc.), as well as self-report (e.g., sleep or appetite disturbance, concentration problems, paranoid thoughts, etc.).

At the beginning of the examination, it is important that the examiner demonstrate an attitude of objectivity, compassion, and fairness. Statements that the examination is being performed to determine what problems might exist, that the examiner is an objective third party, and that the goal of the exam is to provide recommendations as to what is likely to be in the best interests of both the employee and the department, are usually very helpful to ease the employee’s initial anxiety and defensiveness. At the conclusion of the interview it is often helpful to discuss the conclusions and recommendations directly with the employee. This allows the opportunity for the examiner to assess the employee’s level of insight and cooperation, as well as how open to treatment he or she is. It also allows the employee to ask questions about the treatment process, treatment options, likely prognosis, and how successful treatment will be related to eventually returning to work.

FFD Exam vs. Counseling

Administrators are sometimes unsure whether to refer an employee to counseling or an FFD exam. Either can be quite useful, but there are significant differences in the processes, goals, and outcomes of each. These are summarized in table 1.

Counseling	FFD Exam
Administrator’s primary concern is about the employee’s personal adjustment – work problems are absent or mild	Administrator’s primary concern is how employee’s problems affect the job – work problems or potential problems are moderate to severe
Cannot be ordered by administrator – can only be suggested – participation is voluntary	Administrator generally has authority to order the exam – participation may be mandatory
Employee is primary client - goal is to return employee to the highest level of emotional health possible Psychological testing and collateral information are usually lacking	Department is primary client - goals are to determine the employee’s psychological problems and ability to work Psychological testing and collateral information are critical
Written report may not be sent to the	Written report, with clear and objective

department or, if sent, may be skewed in the employee's favor	recommendations, goes to the department
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Counseling can be extremely helpful to police officers and their families (Kates, 1999; Kirschman, 1997), and it may be very useful to recommend counseling services to employees at certain times. Often these services are provided by the employee assistance program (EAP), and can be accessed free of charge. Recommending counseling is particularly appropriate in situations where the administrator notices subtle changes in an employee which he or she believes are being caused by personal problems, but the effects on the employee's work performance are minimal or absent. Unless the work problems are severe or potentially dangerous, an administrator also has the option of initially recommending voluntary counseling, seeing if the work problems are resolved, and subsequently referring the employee for an FFD exam if they are not. When the work problems are very serious, however, an FFD exam should be the preferred initial response since the process is specifically designed to address such problems.

A second difference is that, while the FFD exam may be mandatory if the administrator's concerns are serious enough, it is usually inappropriate for an administrator to require counseling because that implies that the administrator has diagnosed the problem, and prescribed a treatment – obviously stepping into a medical expert role. Counseling may be required subsequent to the recommendations of an FFD exam; however, since the examiner has the appropriate expertise to make such a recommendation. If an administrator suggests counseling or therapy instead of a FFD exam it should be because he or she is primarily concerned about the personal adjustment of the employee.

Third, the counselor's role is very different from that of an FFD examiner, and the two are usually incompatible (Greenberg & Shuman, 1997). In counseling or psychotherapy the employee is the client, and the counselor's primary responsibility is to help, treat, or advise in a way that is in the employee's best interests, whether or not the recommendations make sense from an employer's perspective. To be therapeutic, the counselor needs to remain relatively uncritical and nonjudgmental of the client's self-report and therapeutic goals. However, the evaluator may be quite critical and judgmental regarding the validity of the employee's self-report, as well the appropriateness of his or her employment goals. For example, a counselor might try to help the employee return to work as quickly as possible because the employee believes it would be good for his or her mental health, even if other objective information would suggest that doing so could potentially threaten public safety.

This also raises the issue of professional competence – the therapist and evaluator, by definition, should have different sets of competencies. A counselor who has limited knowledge of or experience with psychological assessment techniques for public safety personnel can be particularly problematic. With this in mind, the IACP Psychological Services Section (1998a), recommends that only psychologists or psychiatrists familiar with law enforcement assessment techniques perform FFD exams. In addition, since the roles of evaluator and therapist are often incompatible, a counselor or therapist may find him or herself in an ethical dilemma if asked to provide an opinion regarding the fitness for duty of one of his or her clients.

Another difference is the type of information that is likely to be considered in each setting. In a counseling setting the source of information is typically little else beyond the self-report of the employee – the objective reality of this information may not be as important

to the success of therapy as are the employee's perceptions of and feelings about the situation. In an FFD exam, the evaluator strives to learn the objective reality of the situation to the greatest extent possible by relying on multiple types and sources of data – self-report, objective tests, and collateral information. Along the same lines, the primary goal of therapy is to restore the client to the highest level of emotional and mental health. In some situations, this could include the therapist encouraging the employee to find another less stressful and dangerous line of work. In others, it might include the therapist encouraging a return to work, in spite of significant work dysfunction, in a misguided attempt to improve the employee's level of self-esteem and self-confidence.

A final issue relates to the type of information that is provided to the department by the professional contact. It is difficult, if not impossible, for a therapist to both furnish information to a department that a therapy client views as unfavorable and simultaneously maintain a therapeutic relationship with that client. In addition, a mental health treatment provider is likely to be reluctant to release personal and confidential information obtained during therapy sessions even if it bears directly on the employee's job performance. Since a therapist cannot release a report unless the employee specifically requests that he or she does so, an employee could potentially object to certain statements in a report and request that they be deleted or reworded. Therefore, if part or all of the information from a therapist is not favorable to the employee, it may not be released to the department, or only favorable information may be reported. In an FFD exam, written conclusions and recommendations are based on objective data as well as the independent judgment of the examiner. Ideally, the FFD examiner should serve a sort of officiating role, making recommendations that are balanced, unbiased, and that attempt to weigh the interests of the employee against those of the department and the public.

Legal Issues

After an administrator has made a decision that obtaining an FFD exam for an officer is necessary, it is important for him or her to know what, if any, limits there may be on his or her ability to compel the employee to engage in the examination. In general, the courts have been quite affirming of a public safety department's right (and obligation) to refer an employee for an FFD exam if there is a reasonable cause for concern about the employee's ability to function safely or effectively. Guller (2000) and Rostow, Davis, Levy, and Brecknock (2001) have provided useful summaries of case law relevant to psychological services in public safety contexts. A few cases stand out as particularly instructive to the FFD process. For example, in *Bonsignore v. City of New York*,^[1] a police officer shot his wife and then killed himself. His widow sued the department claiming the department was negligent for retaining the officer. The court ruled in her favor, opining that a law enforcement department has to show that it has taken reasonable precautions to not retain officers who are emotionally disturbed. Based on another court decision, ^[2] it appears that the doctrine of official immunity may not be invoked to protect a department from claims of negligent retention.

Numerous court cases have affirmed that a public safety department has a right to order an officer for psychological exams, including FFD exams (Guller, 2000). For example, in an Illinois case, *Conte v. Harcher*,^[3] a police lieutenant allegedly used excessive force and was ordered to undergo an FFD examination, which he refused. The court concluded that in order to protect the public interest and the efficiency of the department, the chief has a right to be fully informed about an officer's ability to perform his or her duties, and therefore, to order fitness testing.

The ADA does not prohibit public safety departments from requiring an officer to undergo a psychological FFD exam. Problematic personnel do not need to represent a “direct threat” under ADA to be appropriate for an FFD exam since being emotionally stable is considered to be a “business necessity” for public safety agencies. For example, in *Watson v. Miami Beach*,^[4] a police commander observed that an officer showed “unusually defensive and antagonistic behavior” toward his coworkers and supervisors, and required that he submit for an FFD exam. The officer challenged the order under the ADA, arguing that such an exam constituted a protected inquiry. The court ruled that under the circumstances an FFD exam is job-related and consistent with business necessity. In *Crocka v. City of Chicago*,^[5] the court ruled that it was reasonable to evaluate an officer’s fitness for duty based on the knowledge that he was depressed and taking psychotropic medication. In doing so, the court dismissed the claim that ordering the exam was a violation of ADA. The courts have also ruled that work-related problems such as “poor judgment” and “personality conflicts” are not disabilities under the ADA and are therefore not offered protection under it.

Once ordered to an FFD exam, most courts have ruled that a public safety employee must comply with the order. For example, a Chicago police officer refused to take an FFD exam after being accused of sexual misconduct. The Appellate court ruled that “an officer does not have the prerogative of actively disobeying an order from a superior while the officer subjectively determines whether the order is lawful ... such a practice would thwart the authority and respect which is the foundation of the effective and efficient operation of a police force and destroy the discipline necessary in a paramilitary organization.”^[6] However, in Minnesota, a divided court ruled that an order to submit to an FFD exam is grievable and subject to arbitration under Minnesota’s Public Employee Labor Relations Act.^[7]

Finally, the courts have been fairly inclusive with regard to what behaviors provide a reasonable basis on which to order an FFD exam. They include domestic violence,^[8] excessive absenteeism, tardiness, rapid variations in mood,^[9] making threats of physical harm,^[10] allegations of sexual misconduct,^[11] accusations of excessive force,^[12] and concerns regarding emotional stability after a critical incident such as a shooting.^[13] However, the use of obscene language between police employees does not constitute a reason for an FFD exam.^[14]

Summary and Conclusions

The psychological FFD exam can be a very useful tool for public safety administrators who must deal with problematic personnel. The primary goals of an FFD exam are to determine if an employee has a psychological problem, and if so, to determine the extent to which it might affect an employee’s ability to perform his or her job in a safe and effective manner. It can be effectively used to reduce the need for discipline, maintain a well-adjusted and productive workforce, and potentially save an employee’s career. It can also assist both the employee and department by providing direction to the best resources available to treat the employee’s underlying problems, and hopefully return the employee to work as soon as possible. When a return to work is not possible the FFD exam report can provide the appropriate basis to help the department explore other avenues such as medical leave or disability retirement.

Many red flags may signal the need for an FFD exam, including a pattern of interpersonal conflicts with coworkers or supervisors, insubordination, excessive force complaints, threats

of suicide or homicide, domestic abuse, excessive use of sick leave, being on duty while intoxicated or hung-over, a pattern of poor judgment, sexual inappropriateness, bizarre or threatening behavior, or a high rate of errors. The employee may also complain of depression, anxiety, PTSD symptoms, or alcohol abuse. There are significant differences in how FFD exams and mental health treatment services deal with these issues due to the differences in roles and competencies of therapists and evaluators. In general, while the welfare of an employee may be adequately served through mental health treatment, the interests of the department and the public are best served through the FFD exam process when performed by a psychologist or psychiatrist familiar with public safety assessment issues. In performing an exam, the examiner relies not only on the self-report of the employee, but also on objective psychological tests and collateral information. This combination of information sources allows for fairer and more objective conclusions that are better able to withstand challenges in court or another venue.

The decision to refer an employee for an exam is probably best made by the department administrator, with appropriate collaborative input from the department's consulting psychologist and its legal advisor. This decision may be made easier with the knowledge that the courts have generally been quite affirming of the use of FFD exams in public safety departments, and that departments can be held liable for not using them when appropriate to protect the public's safety. Administrators seem to have been given broad discretion in referring an employee for an exam as long as the reasons for the exam are deemed reasonable.

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About the Author: Dr. Gary L. Fischler is the director of the Institute of Forensic Psychology in Minneapolis, MN. He is a clinical assistant professor of psychology at the University of Minnesota and the Minnesota School of Professional Psychology. Dr. Fischler is a diplomate of several professional boards including the American Board of Law Enforcement Experts, the American Board of Forensic Examiners, and the American Board of Professional Disability Consultants. He serves as an educator and

consultant to both psychologists and public safety departments, conducts research, and continues to perform psychological preemployment and fitness for duty examinations for many law enforcement and other public safety agencies. He may be reached by phone at 612-333-3825 or by email at gfischler@psycheval.com.

*The author would like to thank Irving Guller, Ph.D., Philip Trompetter, Ph.D., and Matthew Guller, J.D. for their comments on an earlier draft of this paper.

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[3] 365 N.E. 2nd 567 (Ill. App. 1977)

[4] 98-4163, 1999 U.S. App. Lexis 10976 (11th Cir.)

[5] No. 98-2250, 203 F.3d 507, 2000 U.S. App. Lexis 1649, AD Cases (BNA) 289 (7th Cir. 2000)

[6] *Hayes v. Police Bd. of Chicago*, 1997 Ill. App. Lexis 832 (7th Cir.).

[7] *Hill v. City of Winona*, 454 N.W.2d 659 (Minn. App. 1990)

[8] Essex County Prosecutor Directive, Essex County, New Jersey

[9] *Werz v. Wilson*, 922 S.W.2d 268 (TX. App. 1996)

[10] *Flynn v. Sandahl*, 58 F3d 283 (7th Cir. 1995)

[11] *Hayes v. Police Bd. of Chicago*, 1997 Ill. App. Lexis 832 (7th Cir.).

[12] *Conte v. Harcher*, 365 N.E. 2nd 567 (Ill. App. 1977)

[13] *City of Boston v. Boston Police Patrolmen's Assn.* 392 N.E.2d. 1202 (Mass. App. 1979)

[14] *Maplewood and Law Enforcement Labor Service*, 108 LA (BNA) 572 (Daly, 1996)

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