# Liability for the Psychiatrist Expert Witness

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**Objective:** An increasing number of general psychiatrists are acting as expert witnesses in the legal system. The purpose of this article is to help psychiatrists who are interested in doing forensic work by informing them of the risks entailed.

**Method:** The author reviews the medical and legal literature about expert witness immunity.

**Results:** The author explains the traditional concept of expert witness immunity and shows how a variety of factors have led to the erosion of this immunity. These factors include the proliferation of experts, the inadequacy of traditional safeguards of potential prosecution for perjury and cross-examination, the growth of attorney malpractice, the lack of protection of the injured party from unscrupulous witnesses, and the ineffectiveness of *Daubert v. Merrell Dow Pharmaceuticals*. Examples are given of how expert witnesses are being held accountable by professional associations and state medical boards and through tort liability.

**Conclusions:** The author provides risk-management strategies and guidelines for psychiatrists who are considering engaging in forensic work.

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An increasing number of general psychiatrists are acting as expert witnesses in the legal system. As Dr. Paul Appelbaum, president of the American Academy of Psychiatry and the Law, stated, "With managed care reducing both the pleasure and the remuneration to be derived from clinical practice, a growing number of clinicians are augmenting their practices by spending some of their time doing forensic work"(1). A more quantitative measure of this statement is demonstrated by the fact that the membership of psychiatrists in the subspecialty organization the American Academy of Psychiatry and the Law has increased from approximately 1,500 in 1992 to more than 2,200 in 2002 despite a general decrease in membership in professional organizations such as APA and the American Medical Association (AMA). Most psychiatrists who join the American Academy of Psychiatry and the Law work as expert witnesses or are interested in doing so.

Traditionally, expert witnesses have been granted legal immunity for their forensic work; i.e., they cannot be sued and have charges of negligence or defamation brought against them. The argument has been that expert witnesses are an important part of the legal system and in the interest of justice, expert witnesses need to be protected from liability. This is changing for all expert witnesses, including psychiatrists. Psychiatrist expert witnesses are beginning to be held accountable for their testimony by being subject to sanctions by both professional associations and state medical boards and through tort liability actions.

The purpose of this article is to review the changing doctrine of witness immunity as it pertains to expert witnesses. The intent is to help general psychiatrists who are interested in doing forensic consultations by informing them of the risks of this work.

## Role of the Expert Witness

The use of expert witnesses is favored in our legal system, and the rules of evidence reflect this belief. Rule 702 of the Federal Rules of Evidence states that "if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise"(2). This federal rule is reflected in the rules governing the admissibility of expert testimony in state jurisdictions around the country. Thus, the testimony of expert witnesses is often used to clarify, explain, and assist with the understanding of many important issues.

## Concept of Witness Immunity

The witness immunity doctrine originated hundreds of years ago in English common law for broad public policy reasons. The intent of witness immunity has been to encourage open and honest testimony without fear of a subsequent lawsuit related to the testimony. In 1585, one of the courts in England opined that without immunity, "those who have just cause for a complaint would not dare to complain for fear of infinite vexation" (3). Also, in 1859, another court in England held that immunity was important to ensure that witnesses would speak freely when giving testimony (4).

In American courts, a similar principle was adopted (e.g., reference 5). In fact, the issue of witness immunity has been considered to be so important by courts that it has been maintained even when there might be negligence. For example, in *Clark v. Grigson* (6), the Texas Appeals Court stated "that no civil liability exists on the part of an expert witness who forms an opinion and states that opinion in the course of his testimony in a judicial proceeding, even though he may have been negligent in the process." The court applied the immunity doctrine on the basis of the public policy that it is in the public's interest to permit expert testimony without the threat of subsequent lawsuits.

The United States Supreme Court confirmed the importance of witness immunity in two cases in the 1980s. In *Briscoe v. LaHue* (7), a convicted man brought action against the police officers who gave perjured testimony against him. The majority opinion held that "witnesses might be reluctant to come forward to testify" if they were liable for the testimony, and "a witness who knows that he might be forced to defend a subsequent lawsuit, and perhaps to pay damages, might be inclined to shade his testimony in favor of the potential plaintiff, to magnify uncertainties, and thus to deprive the finder of fact of candid, objective, and undistorted evidence" (7). In a second case, the U.S. Supreme Court reasoned that witness immunity is important because "the judicial process is an arena of open conflict, and in virtually every case, there is, if not always a winner, at least one loser. It is inevitable that many of those who lose will pin the blame on…witnesses and will bring suit against them in an effort to relitigate the underlying conflict" (8).

State courts have also affirmed the concept of witness immunity for reasons of public policy. One example comes from Washington state, where in 1989, the Washington Supreme Court opined that without immunity, there would be a loss of objectivity and that experts could take the most extreme positions favorable to their clients. The court also argued that it feared that the imposition of liability would discourage anyone who was not a full-time professional expert witness from testifying. Additionally, concerns that one-time or infrequent experts would not carry the necessary insurance to cover the liability risk in testifying also played a part in the court's decision to provide witness immunity. The Washington State Supreme Court acknowledged that the main argument supporting expert witness liability is that the threat of liability would encourage experts to be more careful, resulting in more accurate, reliable testimony. The court stated, "While there is some merit to this contention, possible gains of this type have to be weighed against the threatened losses of objectivity described above. We draw that balance in favor of immunity" (9).

## A Shift in the Concept of Immunity

### *Proliferation of Experts*

One of the factors leading to the desire to increase the accountability of experts is the fact that the use of experts in the legal system has proliferated in the past 30 years (10). Many commercial services offer experts for hire to assist with litigation, and some of these services have thousands of experts on file. Magazines such as *Trial,* the magazine of the Association of Trial Lawyers, contain numerous experts' advertisements that claim that they can bring in the highest monetary judgments possible. Experts are known to influence the outcome of trials. A poll conducted by the *National Law Journal* and LexisNexis (11) found that paid experts were thought believable by 89% of recent criminal and civil jurors. Many of these experts are not considered to be impartial. In fact, many lawyers frankly admit that they do not want any semblance of impartiality in their expert witnesses. For example, Melvin Belli, a well-known plaintiff's attorney, once said, "If I got myself an impartial witness, I would think I was wasting my money." One former president of the American Bar Association said, "I would go into a lawsuit with an objective, uncommitted independent expert about as willingly as I would occupy a foxhole with a couple of noncombatant soldiers" (10).

The Fifth Circuit Court of Appeals expressed its concern about the testimony of many expert witnesses who are members of the academic community and who supplement their teaching salaries with consulting work: "We know from our judicial experience that many such able persons present studies and express opinions that they might not be willing to express in an article submitted to a refereed journal of their discipline or in other contexts subject to peer review. We think that is one important signal, along with many others, that ought to be considered in deciding to accept expert testimony" (12). The court also opined, "Experts whose opinions are available to the highest bidder have no place testifying in a court of law before a jury and with the imprimatur of the trial judge's decision that he is an expert" (12).

### *Inadequate Safeguards*

There is also concern that the safeguards cited by courts to ensure honest expert witness testimony—i.e., potential prosecution for perjury and cross-examination—are not effective (13). The Illinois Supreme Court recognized that "it is virtually impossible to prosecute an expert witness for perjury….The opinion and the opinion is the result of reasoning, and no one can be prosecuted for defective mental processes. The field of medicine is not an exact science" (14). In addition, the Wyoming Supreme Court stated, "A witness is not guilty of perjury simply because his testimony is inconsistent" (15). The court reasoned that "internal inconsistencies in testimony or an insufficient foundation for the basis of an expert's opinion…may

provide sufficient contradiction to allow the jury to disregard the opinion rendered," but does not provide a basis for perjury (15).

The second primary safeguard, cross-examination, is also not an effective means of monitoring expert witness testimony. The Louisiana courts have acknowledged this and state that cross-examination "seldom is of adequate value when thrust against the broadside of the litigation expert who can so gracefully stiff-arm his unprepared cross-examiner" (16). Others have stated that many experts are "repeat performers" who have gained from past experience an ability to remain calm and focused in the midst of an attack on their opinions and credibility. As a result, the expert witness usually remains consistent in his or her testimony: "Searching cross-examination may not yield any other result than to provide an opportunity for the expert witness to repeat his already damaging testimony" (10).

### *Attorney Malpractice*

Another factor leading to the movement to hold experts more accountable for their testimony is that attorneys are now being sued for malpractice. A lawyer can be held liable for practicing below the standard of care for failure "to exercise the skill and knowledge ordinarily possessed by attorneys under similar circumstances." The test is not whether there was an unfavorable result or whether the defendant attorney acted in good faith but whether a reasonably prudent attorney would have made that decision in the same or similar circumstances (17). Some courts have opined that an expert's act of consulting on a case is analogous to an attorney's act of trying a case (e.g., references 18, 19). Thus, if attorneys can be sued, an argument can be made that expert witnesses can also be sued (10).

Attorneys are now given guidelines to protect themselves from malpractice liability. These include guidelines related to fee setting, confidentiality, taking cases within one's area of expertise, and accurate advertising (10). Psychiatrists and other experts need to pay attention to similar guidelines.

### *Intent of Tort Law*

One of the goals of tort law is to compensate an injured party when the cause of the loss can be ascribed to other parties for sound reasons. Tort law's secondary intent is to deter future harm by providing incentives to prevent misconduct. Therefore, one measure of the witness immunity doctrine is whether granting immunity helps to achieve the intent of tort law (10). Some courts have stated that granting immunity to expert witnesses is actually counterproductive to these goals and unfair to the injured party. The argument is that expert witnesses might be harming a plaintiff or defendant by negligent performance and that they should assume responsibility for this harm (19).

### *Ineffectiveness of Daubert and Kumho*

In order to try and keep misleading and unscientific testimony from the courtroom, the U.S. Supreme Court looked at the issue of admissibility of evidence in the *Daubert v. Merrell Dow Pharmaceuticals* (20) and *Kumho Tire Company v. Carmichael* (21) decisions. In these decisions, the court gave the trial judge a gate-keeping function to determine whether evidence was reliable and should be allowed into or excluded from the courtroom. However, these cases have not effectively prevented the admission of scientifically questionable expert witness testimony. Some states have not adopted *Daubert*. Even in the federal courts and in the states that follow *Daubert,* courts have generally erred on the side of allowing testimony to be heard (22, 23). In fact, exclusion of medical expert testimony has constituted grounds for reversible error (23). The general jurisprudential rule is that bias does not preclude a witness from being qualified as an expert; rather, it is only to be viewed as a factor that should be considered by the fact finder in deciding how much weight to give to the testimony. Some legal scholars believe that the "let-it-all-in" approach is alive and well in post-*Daubert* proceedings (22).

## Expanding Arenas for Accountability and Liability

### *Discipline by Professional Associations*

In June 2001, the 7th U.S. Circuit Court of Appeals held that a professional society could discipline a member for improper testimony. The case involved a neurosurgeon who was suspended by the American Association of Neurological Surgeons after he testified as an expert witness for the plaintiff in a medical malpractice suit. The neurosurgeon expert witness sued the American Association of Neurological Surgeons for suspending him. The suspension was upheld by the district court and by the appellate court. The appellate court decision held that the neurosurgeon expert witness's testimony was irresponsible and violated the ethical code of the association to "provide the court with accurate and documentable opinions on the matters at hand" (24).

The field of expert witness ethics, however, is still undeveloped, and many professional societies do not have specific codes related to forensic work, besides the general principles of honesty and avoidance of conflicts of interest (25). The most comprehensive guideline for ethical conduct by forensic psychiatrists has been developed by the American Academy of Psychiatry and the Law (26). All American Academy of Psychiatry and the Law members must also have membership in the APA or the American Academy of Child and Adolescent Psychiatry. When the American Academy of Psychiatry and the Law receives reports of unethical or unprofessional conduct of its members, it refers the complainant to the appropriate district

branch ethics committee of the APA or to the American Academy of Child and Adolescent Psychiatry. If there has been a breach of ethics, the member will be subject to censure by the APA or the American Academy of Child and Adolescent Psychiatry.

### *Discipline by State Licensing Boards*

In 1997, the Washington State Supreme Court ruled that disciplinary proceedings by the state Board of Psychology were allowed against a psychologist who was alleged to have failed to meet professional ethical standards in work that formed the basis of his expert testimony in several child custody cases. It said that witness immunity did not extend to professional disciplinary hearings (27).

Physician expert witnesses may be sanctioned by their medical licensing boards. The AMA's House of Delegates passed a resolution in the late 1990s stating that the provision of expert testimony is the practice of medicine. One of the intents of this resolution was to make testimony by physicians subject to peer review (28). If their testimony is negligent, physicians may be reported to their state medical boards and disciplined. More recently, the AMA's Reference Committee asked the Board of Trustees to suggest remedies to the problem of physicians giving false testimony against their colleagues, including reporting to and sanctioning by state licensing boards (29).

### *Tort Liability*

In addition to experts being at risk for discipline by professional societies and state medical boards, various courts have allowed lawsuits to be brought against expert witnesses (30). Although, to date, I know of no successful lawsuits related to allegations about actual testimony, there have been successful lawsuits related to other aspects of an expert's forensic work. The following are five examples of cases that have set precedents in different jurisdictions for holding experts accountable for work done in the forensic context.

### *Precedent-Setting Cases*

**New Jersey Supreme Court, 1984.** In *Levine v. Wiss and Co.* (31), the court allowed a lawsuit to be brought against a court-appointed expert, an accountant, for alleged substandard performance. The accountant argued that he was entitled to witness immunity and that he was not liable for any negligence in the performance of his professional duties on behalf of the parties. The court concluded that as an accountant, the defendant had a duty to "exercise reasonable care in preparing reports, verifying underlying data, and examining the methods employed in arriving at financial statements" (31).

Although this case did not involve a psychiatrist witness, it is possible to see how the principles elucidated by the court might apply to a psychiatrist who is retained to do an evaluation and arrive at a diagnosis and treatment recommendations in a forensic case. If the diagnosis is not arrived at by practices consistent with the standards of care, it is certainly conceivable that a psychiatrist expert witness might also be liable.

**California Court of Appeals, 1992.** In *Mattco Forge Inc. v. Arthur Young & Co.* (18), the court of appeals allowed a claim of negligence against an accounting firm retained as an expert witness in legal proceedings. The complaint against the accounting firm alleged professional malpractice as well as fraudulent representation of its employees' expertise. For example, the allegation was that the accounting firm's brochure had fraudulently represented the firm's litigation support personnel as having special training in California procedures. The complaint further alleged that an inexperienced certified public accountant was used by the accounting firm and that he had no training or experience in litigation services.

The trial court dismissed the lawsuit against the accounting firm on the grounds of expert witness immunity. The California Court of Appeals reversed the dismissal.

Although *Mattco* did not involve psychiatrist expert witnesses, it is relevant to psychiatrists because it allowed a retaining party to sue expert witnesses with the allegations that they had misrepresented their expertise and that their work was below the standards of practice. The retaining party claimed to have lost its lawsuit as a result of the alleged actions of the expert. It is certainly conceivable that this same principle could be used to bring a case against psychiatrist expert witnesses who misrepresent their forensic experience or whose performance as experts is alleged to be substandard.

**Missouri Supreme Court, 1992.** In *Murphy v. A.A. Matthews* (19), the Missouri Supreme Court held that witness immunity does not bar lawsuits against professional expert witnesses for alleged negligence in reaching opinions. The complaint was against engineers who had been retained as experts and alleged that the engineers' incompetence and carelessness had led to an inability by the plaintiff to obtain appropriate compensation in the legal action. The primary defense against the allegations was that witness immunity protected the engineers from liability. The trial court dismissed the case on the basis of the witness immunity doctrine, and the Missouri Supreme Court reversed the dismissal.

The Missouri Supreme Court opined that witness immunity should be limited in scope. The court held that witness immunity should continue to be limited to defamation or to retaliatory cases against adverse witnesses. The court felt that the imposition of liability would encourage experts to be careful and accurate. It opined that since professional experts are subject to negligence liability in their other work, it is not out of line to expect that services related to litigation should be treated in a similar manner.

The *Murphy* court also discredited the notion that expanding witness liability would result in difficulty in retaining experts by stating, "There is no reason to believe

that professionals will abandon the area of litigation support merely because they will be held to the same standard of care applicable to their other areas of practice" (19). Responding to the criticism that expert witness liability may result in a never-ending cycle of litigation, the *Murphy* court acknowledged that withholding immunity would lengthen the litigation process for yet one more lawsuit. Despite this concern, the court reasoned that an increase in the number of trials was already allowed for trial attorneys who allegedly commit malpractice and indicated that experts should receive consistent treatment.

In the view of the court, experts act as advisors and advocates, as opposed to being objective and independent witnesses. The court stated that the engineering firm charged a hefty fee to provide expert services to assist the claim of the plaintiff. By charging this fee and voluntarily agreeing to provide services, it assumed the duty of care of a professional; therefore, witness immunity did not bar the lawsuit from being heard by the court.

In this case, as in *Mattco,* we can see the evolution of thinking regarding expert witness immunity. The *Murphy* court supported the right of aggrieved parties to bring a lawsuit against a witness that they retained if they feel that the services of that witness were performed negligently. This right could also be extended to parties who retain psychiatrist expert witnesses. For example, a psychiatrist who undertakes expert witness work without receiving adequate training in how to do this type of work and who does not understand the standards of practice for forensic evaluations, report writing, and testimony might be subject to a claim that the psychiatrist expert witness performed his work negligently and was responsible for any unfavorable judgment.

**California Court of Appeals, 1996.** In *Pettus v. Cole et al.* (32), the court ruled that two psychiatrists violated the California Confidentiality of Medical Information Act when they disclosed to an employer details of psychiatric disability evaluations they had performed on behalf of the employer. Rather than negligence, this case involved allegations of inappropriate disclosure based on specific statutory confidentiality requirements. The case also redefined the physician-patient relationship as including the relationship between evaluator and evaluee.

Mr. Pettus requested time off from work because of disabling stress. His employer's short-term disability policy required that he undergo a medical examination that would be arranged and paid for by the employer. Two psychiatrists evaluated Mr. Pettus and submitted detailed reports to the employer, including statements that Mr. Pettus's condition might be linked to an alcohol abuse problem. As a result of these evaluations, Mr. Pettus's employer required him to receive alcohol treatment as a condition of continued employment. Mr. Pettus was terminated when he refused to enter an alcohol treatment program. He complained that he never authorized the doctors to disclose the full contents of their evaluations to his employer. Neither psychiatrist had obtained a written authorization for disclosure of all the information.

The California Confidentiality of Medical Information Act has a specific provision that was the basis of this lawsuit. This subsection states that when an employer requests and pays for employment-related health care services, the "provider of health care" may not disclose the medical cause of functional limitations. It states that the information disclosed should only include the functional limitations of the patient that may entitle the patient to leave work or to limit the patient's fitness to perform employment. The California Confidentiality of Medical Information Act states that a "provider of health care" may not disclose medical information without a written authorization from the patient.

The psychiatrists claimed that there was no physician-patient relationship, and therefore, they had no obligation of confidentiality. The court of appeals found that professional services were performed, and therefore, there was a relationship with a duty of confidentiality. The court of appeals held that the information released to the employer was far more than the employer needed to have to accomplish its legitimate objective. The psychiatrists were not being sued for malpractice. They were being sued for a breach of the duty of confidentiality, as specified in the California Confidentiality of Medical Information Act.

The psychiatrists were subsequently involved in a prolonged lawsuit over the next several years that included another review by the court of appeals. The case was finally resolved in November 2000. The court affirmed that the psychiatrists had violated the statute but had not caused the plaintiff any damage.

This case demonstrates that psychiatrists need to know statutory and legal requirements in their jurisdictions if they plan on undertaking forensic work. These requirements are generally not taught in medical school or in residencies.

**Colorado Court of Appeals, 1999.** In *Dalton v. Miller* (33), the court ruled that a psychiatrist could be sued for alleged misconduct of a forensic examination. The facts of the case are as follows: The plaintiff, Patricia Dalton, sued her insurance company for refusing to renew her health insurance policy. Since she alleged resulting emotional distress, the insurer requested an independent psychiatric examination of the plaintiff to determine her emotional and psychological condition. Dr. Miller examined the plaintiff, prepared a written report, and testified in a videotaped deposition. The insurance company settled the claim. The plaintiff then sued the psychiatrist for his conduct during the examination and for alleged discrepancies between his written report to the insurer and his videotaped deposition testimony. The trial court dismissed the claim against the psychiatrist, reasoning that the defendant, Dr. Miller, was entitled to immunity for his activities conducted pursuant to the psychiatric evaluation. The court of appeals upheld the portion of the trial court's de-

cision that said that witness immunity protected the statements of the physician witness in his report and deposition. However, the court of appeals reversed another part of the lower court's decision. It stated that the case could proceed on the issue of whether the psychiatrist's conduct during his *examination* caused the plaintiff harm. The plaintiff claimed that the psychiatrist's questions were overly intrusive and that he forced her to take psychological tests. With this issue, the case against the psychiatrist was allowed to proceed.

This case demonstrates how physicians can be sued for their conduct during an examination even if they are immune from claims of negligent testimony. This is an area of potential liability for psychiatrists to be aware of if they choose to undertake forensic evaluations.

### *Recent Unpublished Cases*

Neither of the following recent cases set a precedent, as did the previously discussed cases, because they are not cases that have reached the level of the state appellate or supreme courts. However, they both serve as examples of cases in which psychiatrists have been sued on the basis of the allegation that their forensic work was negligent and caused harm to the plaintiff. (Identifying information has been disguised in these cases.)

**Case 1.** A psychiatrist was asked by an employer to perform a "fitness-to-duty" evaluation of an employee. The concern was that the employee often misconstrued actions or conversations to be about himself when they were not. There was also concern about potential violence by the employee. The psychiatrist did an evaluation and diagnosed the employee as having a paranoid personality. Subsequently, the employee was suspended; he brought a lawsuit against the psychiatrist. The employee retained an "expert witness" who wrote a report discrediting the basis of the diagnosis. This "expert" stated that the diagnosis of paranoid personality was inaccurate and opined that the employee's thoughts of conspiracy were related to cultural ideas rather than to a psychiatric diagnosis. The employee represented himself in this lawsuit against the psychiatrist. Possibly partially because the courts give great leeway to pro se plaintiffs (i.e., those who represent themselves), the court refused to dismiss several of the allegations against the psychiatrist and allowed the lawsuit to proceed. Causes of action included the allegation that the psychiatrist fabricated the diagnosis to please the employer and that the diagnosis was without merit. Thus, the psychiatrist was put in the position of needing to retain a malpractice attorney to hire experts (including myself) to determine whether or not the diagnosis of paranoid personality was reasonable. These causes of action were eventually dismissed after several years of aggravation and stress for the psychiatrist/defendant.

**Case 2.** A psychiatrist was asked to evaluate a disability claim brought by a 45-year-old man with recurrent depression. She interviewed the man and wrote a report stating that his complaints were consistent with a major depressive disorder and supported his claim of disability. Subsequent to the writing of the report, the man's insurance company showed the psychiatrist a surveillance videotape that it had made of this businessman. The videotape showed that after leaving the psychiatrist's office, the man was laughing and conversing with an acquaintance as he went shopping in the neighborhood. This was in contrast to what the man had reported to the psychiatrist. He had told the psychiatrist that he was barely able to move and could not engage in pleasurable activities. On the basis of this brief surveillance videotape, the psychiatrist wrote a supplemental report in which she stated that she was changing her diagnosis to "malingering." As a result of this supplemental report, the man's disability claim was denied. He brought a lawsuit against the evaluating psychiatrist, and three causes of action were set forth: defamation, intentional infliction of emotional distress, and conspiracy. The psychiatrist's attorney requested a consultation to determine whether the psychiatrist's diagnosis of malingering was reached within the standards of practice for forensic psychiatrists. The attorney tried to have the defamation cause of action dismissed on the basis of the fact that psychiatrists have a qualified privilege related to their opinions; however, the court allowed this cause of action to proceed in its demurrer. This case is currently in litigation.

## Guidelines for Psychiatrist Expert Witnesses

The concept of legal immunity for psychiatrists who work as expert witnesses is eroding. Psychiatrist experts are being held accountable by professional associations, state licensing boards, and tort liability actions. Being an expert witness can be challenging and rewarding for general psychiatrists. It is important, however, to be aware of the potential liabilities involved in this work. The following guidelines will help psychiatrists who are considering engaging in forensic practice defend themselves successfully against claims of negligence.

Psychiatrists should have training regarding the conduct of forensic evaluations before undertaking such work. Clinical evaluations and reports differ from forensic ones. Psychiatrists need to understand the relevant legal issues, including statutory requirements; civil and criminal procedures; how to prepare for and conduct evaluations; how to interact with the evaluee, attorneys, and judges; how to write forensic reports; and how to give depositions and court testimony. Psychiatrists should also be aware of ethical codes related to forensic work, such as the ethical guidelines of the American Academy of Psychiatry and the Law.

Psychiatrists need to be certain that they have the time to meet court deadlines and requirements. Forensic work can be flexible in the sense that records can be reviewed at

the convenience of the psychiatrist, e.g., during cancelled patient appointments or in the evenings. However, at times forensic work is inflexible, e.g., when reports need to be submitted by a discovery deadline or when a psychiatrist is called to appear in court or to give a deposition.

Psychiatrists should be aware of risk-management techniques for doing forensic work to protect themselves from malpractice liability. These are similar to those taught to attorneys and include the following:

1. Not specifying a likely result or opinion and/or advertising how your services will achieve that result.
2. Arranging fees and expenses, including retainers, at the outset of consultation.
3. Maintaining strict records, including audiotaping or videotaping interviews when appropriate.
4. Keeping the attorney informed of your opinion as it develops.
5. Not overstating your opinions.
6. Not taking cases beyond your ability and expertise.
7. Preserving the attorney's and client's confidence, as specified in the legal proceedings in which you are involved.

Psychiatrists should be certain that they have malpractice coverage that will support their defense in the event that they are sued in reference to forensic work.

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