



“Psychological Fingerprints” and Reliable Forensic Psychiatric Assessment of Emotional Distress Damages Claims

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Reliable forensic psychiatric assessment of emotional distress damages claims requires recognition that seeking financial compensation may influence, or distort, how a litigant relates, recalls, and discloses information. An individual may malingering, i.e., intentionally feign the presence or severity of psychiatric difficulties or misrepresent the source of genuine psychiatric difficulties. Using reliable forensic psychiatric assessment methodology is necessary for determining whether such malingering or misrepresentation is present. Opining about an individual’s emotional distress without substantially more than an individual’s representations is generally of limited utility and potentially misleading to the finder of fact. Mental health professionals are neither truth nor lie detectors, especially regarding the accuracy of reports regarding controverted historical events that may be central to a litigant’s liability claims and understanding the emotional distress damage that is claimed.

“Psychological fingerprints” are the presence or absence of expected or common manifestations of the type(s) of emotional distress that an individual reports. Such fingerprints may include, for example: (1) photos and tickets reflecting an individual’s attendance, especially the purchase of a seat in the front row, at the Westminster dog show, while claiming to suffer a severe phobia of dogs as a result of an attack by a neighbor’s unleashed pit bull, or, reciprocally, a refund for tickets to this event purchased prior to the dog attack; (2) data demonstrating maintenance or substantial decline of the

frequency (and length) of gym visits or tennis playing of an individual who claims to be severely depressed and lacking interest in and energy to continue their longstanding exercise regimen or weekly doubles engagement; or (3) documentation of the initiation of oral contraceptive use for pregnancy protection during a period in which an individual reports having suffered substantial relationship harm due to avoidance of sexual activity.

The skilled use of psychological fingerprints supports forming reliable forensic psychiatric opinions regarding the presence, nature, cause, and prognosis of a litigant's claimed emotional distress. Such fingerprints fundamentally consist of objective indicia of the presence or absence of the emotional distress of individuals in litigation-related settings. Reports of emotional distress in these settings are not inherently or necessarily inaccurate, but the risk of inaccuracy necessitates using reliable means to determine their accuracy.

Determining what types of psychological fingerprints will assist in assessing reported emotional distress requires expertise regarding how relevant mental disorders typically manifest, detailed knowledge of a litigant's reported distress, particularly the manner and circumstances in which it is expressed, a reasonable degree of knowledge regarding what legal discovery entails, and appreciation of the reliability of the fingerprint data that are sought. The question, "If reported symptoms or difficulties were genuinely present, what types of documents or materials would reflect such?" often helps guide the search for psychological fingerprints. An expert's knowledge of what materials have been produced in discovery and may yet be, facilitates examination of such fingerprints. Collaboration between expert and attorney, especially early in discovery, can be essential to obtaining ample evidence of this type.

Psychological fingerprint data are equally important for demonstrating the genuine presence or absence of claimed emotional distress. It is equally incumbent upon forensic psychiatrists retained by plaintiffs and defendants to obtain such data. The degree of the need to gather this data and the amount sought is largely case-dependent.

The most useful psychological fingerprints are highly individual and symptom-specific. Common important sources include: (1) unredacted, complete social media

records; (2) pharmacy records, which reflect type and dosing of psychotropic and other medications, as well as potentially independent causes of reported symptoms, including medication side effects, such as diminished libido, and unrelated medical conditions that produce manifestations of depression or anxiety; (3) primary care practitioner records, in which severe symptoms are commonly reported or observed, and life stressors are recorded; and (4) lifetime mental health treatment records, which are crucial for helping to reliably establish whether and to what extent reported symptoms were present prior to a litigated event to which emotional distress is attributed. Many other types of materials, such as tax returns, passports, and credit card records that are not typically considered within the purview of psychiatric assessment, may also yield important “fingerprint” data. Courts emphasize the importance of reliable scientific methodology. A forensic psychiatric assessment is not merely a narrative or recitation of an individual’s reported emotional distress. It is central to assessment to conduct independent analysis that includes using techniques or data to help test or establish the presence, magnitude, and cause of distress. Expert use of psychological fingerprints generally comprises a core component of this analysis.