

How to Assuage Adjudicator Concerns About Mental Health Evaluations

While asylum practitioners and mental health professionals view an assessment of the torture survivor's mental health as a critical piece of evidence, adjudicators may be less enthusiastic. There are a number of questions which adjudicators and government attorneys frequently ask regarding mental health assessments. Preparing to address these is critical in preparing for a hearing, an asylum interview, or simply in working together with the mental health professional to craft an assessment.

For a detailed outline of common questions and suggested responses, refer to *Psychological and Psychiatric Opinions in Asylum Applications: Ten Frequently Asked Questions by Fact Finders* by Uwe Jacobs and Stuart L. Lustig, 15 *Bender's Immigration Bulletin* 1066, August 1, 2010 and watch a video panel discussion moderated by Karen Grisez with Stuart Lustig and David Gangsei on www.healtorture.org.

The Elephant in the Room: Malingering

Skeptical adjudicators and government attorneys will frequently ask "but how do you know he/she is not malingering?" Adjudicators may erroneously believe it is easy to "fake" symptoms to win asylum. An article from the New Yorker, *The Asylum Seeker: For a chance at a better life, it helps to make your bad story worse*¹ does not help this suspicion. Assume that a jaded adjudicator has read this article and views all asylum seekers to be like the woman in the article - embellishing symptoms as instructed by others to win asylum.

It's important for the mental health provider to address these concerns. First, explain and define malingering. Malingering is the intentional production of false or grossly exaggerated physical or psychological symptoms, according to the DSM-IV. The assessment and testimony should discuss what the mental health professional does to evaluate malingering. To learn more about malingering, Dr. Stuart Lustig recommends articles by Dr. Phillip Resnick.²

¹*The Asylum Seeker: For a chance at a better life, it helps to make your bad story worse*, Suketu Mehta, August 1, 2011, p. 32. Available with subscription at: http://www.newyorker.com/reporting/2011/08/01/110801fa_fact_mehta.

²*In Session with Phillip J. Resnick, MD: Malingering of Psychiatric Symptoms*, Phillip J. Resnick, MD, interviewed by Norman Sussman, MD, *Primary Psychiatry*. 2006;13(6):35-38. Available at: <http://www.primarypsychiatry.com/asp/articleDetail.aspx?articleid=456>

Addressing Bias

In addition suspecting clients are malingering, adjudicators may believe the mental health professional is biased in favor of the asylum seeker. This can lead the adjudicator to view the mental health professional as an advocate for the client as opposed to an expert on the client's mental state.

A good way to address this bias concern is to educate the adjudicator about the professional process and standards the mental health provider has followed in the assessment and/or treatment process. It is ultimately intuitive that a psychotherapist would only write an assessment or be testifying in a case where he or she feels there is sufficient clinical documentation to support the diagnosis and conclusions. It may be useful to emphasize the professional's own ethical obligations and personal credibility as "checks" against bias.

Inconsistencies are Consistent

Inconsistencies are another area where the worldview of adjudicators and mental health providers collide. In the asylum process tremendous weight is placed on determining the credibility of the applicant. As a result, inconsistencies in statements and/or testimony frequently become the focus of an adjudicator's decision and can derail a client's otherwise meritorious asylum claim.

Individuals working with torture survivors know that inconsistencies may actually be quite consistent with the claim and even indicate a credible story, contrary to an adjudicator's suspicion that all inconsistencies indicate a fabricated claim. A mental health evaluation or testimony may explain the normal psychological or neurological reasons behind such inconsistencies in the client's statements.

To strengthen statements about inconsistencies, the mental health evaluator should connect the data and observations of the client to the clinical conclusions and diagnosis. Include citations to professional articles and studies corroborating the clinical conclusion that inconsistencies are, in fact, consistent with experience of trauma. Explaining the research on this subject can be tremendously instructive for an adjudicator who may lack awareness of the issue. However, be mindful of limiting the volume and technicality of supplemental resources, given the adjudicator's limited time in reviewing each case.

This information is based on the 2011 National Capacity Building Institute: *Torture Survivors Seeking Asylum: The Intersection of Forensic Mental Health Evaluation and Legal Representation*. Thanks to presenters Karen Grisez, Stuart Lustig, and David Gangsei for their insights and expertise.