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QUESTION: *Is my client malingering?*

Medical Settle, LLC Response:

One may suspect, but no one really knows.

Malingering is defined as producing false or exaggerated psychological or physical symptoms*, and is a frequent concern regarding traumatic brain injury clients in forensic contexts. In one large research study of personal injury cases, the base rate of malingering and symptom exaggeration was estimated to be 29%.* Although malingering may be easy to define, its detection and diagnosis in clinical practice is not so simple. The diagnosis typically involves consideration of the medical record, the patient's self-report, the observed behavior, and the results of a comprehensive neuropsychological examination.

In cases of possible malingering, the medical record may show inconsistencies in history or exam amongst providers. The patient's self-report may include unclear or vague answers (e.g., the inability to describe a headache pattern), or improbable symptoms.

Additional 'flags' may be a wide variety of symptoms, increasingly severe symptoms over time, and symptoms not congruent with behavior (e.g., a claim of imbalance, while the patient is observed to climb out of a car and up the stairs with no problems; laughing and joking with the staff while reporting a headache on the pain scale of 10/10). There may be claims of inability to read, yet the patient is able to complete detailed intake forms at the reception desk. Or reported finger numbness and a weak grasp while being observed to nimbly text single-handedly with the same hand.

An experienced treating physician may observe other inconsistencies that alert them to the possibility that the patient is malingering. For example, the patient may provide an incredibly detailed account of the injury or of their daily activities, while claiming to have memory deficits. They may be uncooperative for the exam

(e.g., refuse to open their eyes or refuse to complete eye tracking or balance measurements), or fail to follow through with treatment recommendations (e.g., canceling or failing to arrange rehab appointments, declining or ‘forgetting’ to take medications prescribed for reportedly severe symptoms).

The physical exam may also raise concerns about objectivity, especially when the patient is unable to show the same abnormalities multiple times during the same exam or across examiners. Distraction during the exam often leads to a more accurate assessment—for example, if the patient’s heel-to-toe walk improves while doing a cognitive task (e.g., counting backward from 100 by 7), then the improved gait is considered their baseline. Likewise, the clinician may be able to elicit a more objective eye tracking exam while challenging the patient to simultaneously recall a series of words.

Neuropsychological testing may indicate malingering, especially when multiple tests of memory function are administered and inconsistencies in test performance are shown. Studies show that suspected malingerers perform worse and report more symptoms than those who are truly impaired. Malingerers often select the wrong response deliberately and thus perform significantly below chance, or they fail to answer simple questions or fail to make easy comparisons that impaired subjects make correctly. Note however that the optimal combination of tests and strategies for combining results have yet to be determined. Additionally, a variety of alternative explanations such as inattention, poor cooperation, psychiatric illness, and some neuroendocrine diseases can result in suboptimal effort during testing and thus affect the ability to finalize the diagnosis of malingering.*

In summary, because we have yet to achieve reliable and valid scientific measures, a client who shows possible signs of feigning an injury via their medical record, self-report, observed behavior, and neuropsychological examination, can be identified with probable, but not definitive, malingering.

*Citations from the medical literature are provided in Medical Settle’s formal Medical Opinion Reports.



Contact us for a free 30-minute consultation about your client’s case.

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