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Practices in Forensic Neuropsychology: Perspectives of Neuropsychologists and Trial Attorneys.

Sixty-six members of the National Academy of Neuropsychology and 52 members of the American Trial Lawyers Association responded to a survey concerning current practices in forensic neuropsychology. Ninety percent of responding neuropsychologists and 94% of attorneys indicated that up to one half of their practices involve personal injury evaluations. The majority of neuropsychologists (88%) and attorneys (75%) reported that attorneys never observe neuropsychological testing. The typical (32%) neuropsychologist releases raw data in only one quarter or less of their forensic cases, but the modal attorney (44%) reported receiving raw data in almost all brain injury cases. While only 17% of neuropsychologists indicated that in the majority of their forensic cases, they informed attorneys of the tests to be administered, 41% of attorneys reported that they are provided this information in most cases. Almost half of responding neuropsychologists (47%) reported that they have been informed by attorneys of what findings would be most beneficial to their clients while 87% of attorneys deny that this ever takes place. 85% of neuropsychologists indicated that they are never required by attorneys to conduct neuropsychological testing themselves, but more than one third (37%) of attorneys stated that they almost always make this request. The most commonly used payment arrangement in personal injury cases is periodic billing. The modal neuropsychologist (26%) charges $126 to $150/hour for assessments and more than $200/hour for testimony. The majority of attorneys (62%) indicated that they retain neuropsychological experts in most of their brain injury cases. Attorneys reported that they typically locate experts by referral from other attorneys (58%) and health care professionals (56%). In addition to conducting assessments, preparing reports, and providing testimony, many attorneys ask their neuropsychological experts to help them prepare for cross-examination of the opposition’s expert (77%) and to provide information to be used to prepare plaintiffs for their neuropsychological examinations (38%). Fewer neuropsychologists than attorneys acknowledged that they are asked to perform these latter two tasks (58% and 12%, respectively). Most attorneys (88%) consider board certification an important criterion in selecting an expert. Lawyers typically spend up to an hour preparing their clients for neuropsychological evaluations (37%) and commonly cover test content (21%), detection of malingering (19%), and brain injury symptoms (19%). Twenty-nine percent of attorneys reported that they educate their clients about the MMPI-2, a measure administered by 77% of neuropsychologists. Areas of agreement and divergence between the groups were identified and addressed. Ethical issues raised by identified practices were examined.

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The use of third-party observers in neuropsychological examinations has become a heated issue in recent years. It has been suggested that the only way to insure that tests have been administered properly and that subjects’ responses have been documented properly is to observe the examination through the use of a third party or through one-way mirrors or video-recording techniques. Some research has suggested a social facilitation factor that results in improved test performance when additional persons observe examinations whereas other findings suggest a negative effect on other measures. Some researchers have suggested that such minor observer effects are of little impact and have negligible relevance to individual test scores in clinical examinations. In early 1999, we mailed 3,167 surveys that included questions regarding the use of observers to the entire U.S. NAN membership. Our survey form indicated that observers or video recordings...