

No Good Act Goes Unpunished: Reporting Wrongdoing Within Your Police Department

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Retaliation for Protected Activity and the Unethical Medical Practices Supporting Fitness-for-Duty Evaluations

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Conventional wisdom among many police officers is that a fitness-for-duty evaluation order is tantamount to the kiss of death. Departments possess broad discretion in ordering FFDE's. While not originally intended to be disciplinary in nature, some officers have discovered

In theory, the reasoning behind allowing police departments to refer an employee for psychological screening is sound. These are often high risk, high stress occupations. In order to protect the public interest, as well as maintain the efficacy of the force, police

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the hard way that the practice is ripe for abuse. In particular, there is growing concern that officers are being ordered to submit to FFDE's in retaliation for reporting wrongful activity within the police department. There is a risk that some officials will send officers to department-friendly evaluators who will simply rubber-stamp the end result sought by the police department as a way to justify right eliminating perceived troublemakers.

and other public safety departments have a —and an obligation—to know whether an officer is able to perform the tasks of the job safely and efficiently. Legally, most courts have affirmed police departments' ability to mandate fit-for-duty evaluations when there is reasonable, legitimate

cause for concern. Unfortunately, in practice, not all FFDE's are being ordered for the right reasons.

What is an FFDE?



Law enforcement officers must be mentally and emotionally stable from the time of hire throughout employment. When this stability comes into doubt, agencies may turn to a psychological fitness-for-duty evaluation (FFDE). These guidelines are designed to provide specific guidance to law enforcement agencies in monitoring the psychological fitness-for-duty evaluation process with the primary goal of improving the quality of this police psychological activity. Ideally, all agencies and their evaluators would approach these evaluations similarly so that administrators can count on consistency, both internally and externally. Toward that end, the Police Psychological Services Section has developed guidelines for law enforcement agencies that reflect a range of commonly accepted practices of the section membership

Ideally, the psychiatrist conducting the evaluation would be a neutral and objective third party professional capable of considering both the interests of the officer, and those of the department and public at large. It is inappropriate for a psychiatrist to get involved in employment conflict cases. Medical professionals must be cognizant of the potential exploitation of FFDE's. They have a duty to ask questions and gather facts to determine whether such an evaluation is in fact appropriate and not a misuse of psychiatry.

FFDE's conducted by biased evaluators can have devastating consequences. Not only is the examination itself intrusive and stressful to the officer, but the results can be easily manipulated. Many components of the exam are subjective; even results of objective testing can be largely overshadowed by the final conclusions of the evaluator. The subject police officer's employment may be placed in jeopardy once this "medical opinion" is memorialized in a written report and submitted to the department. Even the stigma of a forced psychiatric exam

can be used to discredit an officer.

As an officer ordered to undergo an evaluation, what can you do to protect yourself? Immediately contact your union representation and/or obtain legal representation. In most circumstances to refuse a FFDE is considered insubordination. It is important to keep in mind that the psychiatrist is not *your* doctor. When undergoing the exam be polite and compliant, but do not provide any more information than is asked of you. Be aware of any paperwork you are asked to sign. When in doubt, seek legal advice. Consider scheduling a second, close-in-time evaluation with an independent psychiatrist of your choosing.

A complaint was recently filed in federal court against an Atlantic County psychiatrist alleged to have violated his ethical duties by agreeing to perform an FFDE on a police officer that had been ordered amidst a heated and controversial union contract negotiation process. The psychiatrist was aware that the officer was the lead union negotiator but nevertheless accepted the

referral and performed the evaluation. The doctor's report—of an officer with a nearly unblemished 21-year record on the force—contained factual errors and misrepresentations. The department then used this report as its basis for terminating the officer.

Fitness-for-duty evaluations should not be used as a form of retaliation or punishment. If you believe you have suffered harm as a result of having been subjected to an improper evaluation consider consulting with an attorney immediately in order to take protective measures. At the very least, document, or better yet, record the entirety of each conversation you have with the FFDE psychiatrist.

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