Fitness for Duty

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Key Points

- The neurological fitness for duty evaluation (FFDE) is a non-clinical, medico-legal consultation encounter, designed to assess for neurological conditions and associated physical or mental complications that may affect the safe performance of an occupational role.
- Three factors are integrated into an FFDE, that the neurologist must consider. Risk: the likelihood that a worker will cause harm to self or others when performing work. Capacity: objective measures such as physical abilities, strength, flexibility, cognition, and endurance. Tolerance: subjective determination of the ability to tolerate work in general or at certain levels.
- The neurologist conducting an FFDE is typically not engaging in a doctor-patient relationship, thus proper attention to the non-clinical ethical considerations is necessary.
- The FFDE for safety sensitive occupations (e.g., pilots, physicians, law enforcement officers, military service members) requires careful attention to the potential for minor symptoms to impact duty-specific specialist functions.
- Detection of potential neuropsychiatric complications may require consultation with psychiatric and/or neuropsychological FFDE providers.
- Ultimately, the goal of the assessment and report to the interested party is maintaining an acceptably low risk for safety-complications, while providing a reasonable treatment plan for return to work/duty (if possible).

Abstract

The neurologist is frequently asked to evaluate a patient to determine if they are able to function at work following an illness, injury, or for perceived work-related problems. This type of evaluation is called a Fitness for Duty Evaluation (FFDE). The FFDE is a specific type of evaluation that determines a workers ability to function in a specific occupational environment. The FFDE also determines if the worker is safe to return to the workplace, not only for themselves but also for other employees, clients and the public at large. The following article will look at the many variables the Neurologist will need to consider when doing this type of evaluation.

Introduction

The neurologist is frequently asked to opine informally upon his/her patient's ability to function at work following an absence due to illness and should be familiar with the Americans with Disabilities Act (ADA, 1990; following the ADA Amendment Act (ADAAA), 2008) Enforcement Guidance on disability-related inquiries and medical examination of employed persons.

A Fitness For Duty Evaluation (FFDE) is a medical and/or psychological examination usually performed on a safety sensitive occupation worker that provides information about the workers' physical and/or mental condition as it relates to, and within the scope of the evaluee's job duties. Fitness for duty evaluations (FFDE) are not permitted before a job is offered and may otherwise only be requested if the employer believes (1) that an employee cannot perform their job safely and successfully due to a medical or psychological condition, (2) that the apparent condition presents a safety risk, or (3) when the employee has returned to work following FMLA absence from work from due to his/her own illness.

The purpose of FFDE is to determine whether the employee is capable of performing their required duties safely and if an accommodation is needed, and thereby the FFDE promotes individual health, well-being, productivity and also safety in the workplace for other employees, clients and the public. However, an employer may not request FFDE unless the request is both job related and consistent with business necessity. The U.S. Equal Employment Opportunity Commission (2000) provides guidance on disability-related inquiries and on medical examinations of employees; however, state legislation varies such that legal consultation is advisable in determining the indication, scope and conduct of an FFDE.

The relationship between the neurologist and the evaluee requires clarification prior to the start of the evaluation. In a FFDE the neurologist is not engaged in the usual practice of medicine. They are performing an evaluation for a third party, usually the subject's employer. The FFDE does not qualify as a doctor-patient relationship, as the neurologist is not the evaluee's advocate, but rather is hired to form an opinion for a third party. Thus, it is not the practice of medicine as usual and should be very clearly explained, in writing and signed that both the evaluee and neurologist (evaluator) understand and agree to this relationship from the outset.

Factors to Consider in Fitness for Duty Evaluation

Fitness for Duty evaluations need to be planned and administered in a manner that will not conflict with federal regulations that were designed to prevent employment discrimination while determining whether a person is able to do the job or return to the job they were hired for. The Equal Employment Opportunity Commission (EEOC), the Americans with Disabilities Act (ADA, 1990) and the ADA Amendments Act (ADAAA, 2008) are designed to ensure equal job opportunities for protected classes and to prevent employment discrimination.

The ADA defines "disability" as a physical or mental impairment that substantially limits one or more major life activities, and includes people who have a previous record of such an impairment, even if they are not currently considered disabled. The ADA's, "disability" is a legal term, not a medical definition, and is different from the definition of disability under some other laws, such as for Social Security Disability. An employer may legally refuse to hire a person with an ADA disability, if that person poses a significant risk to the health or safety of themselves or others that cannot be eliminated by a reasonable accommodation. An example would be a person that is "legally blind," (visual acuity of 20/200 or worse with the best possible correction, or a visual field of 20 degrees or less) applying for a school bus driver position. Even with reasonable accommodation there would be significant risk of injury or death to the driver themself, the student passengers, and others. This risk cannot be mitigated with accommodations.

When assessing Fitness for Duty, three primary factors; risk, capacity, and tolerance should be considered (Talmage et al., 2013). Assessment of risk and capacity can be correlated to federal guidelines established by the ADA. Risk is the likelihood that a worker will cause harm to self or others when performing work. The FFDE evaluator will make decisions based on a reasonable degree of medical certainty as it relates to known medical conditions. Capacity refers to objective measures such as physical abilities, strength, flexibility, cognition, and endurance. In a FFDE, capacity adequately measures these physical parameters using valid and reliable testing. This provides an effective means to assess work ability based on a reasonable degree of medical certainty. Tolerance is a subjective determination that refers to the ability to tolerate work in general or at certain levels. Tolerance is affected by pain, psychosocial or psychological factors including the motivation to return to work which can completely defy scientific measurement or verification especially in return-to-work cases.

Performing a FFDE on an evaluee for whom opioids are legally prescribed or other pain medications and sedating drugs require special attention. A prescription for opioid pain medications indicates the presence of pathology and may mask pain symptoms that can enable further damage to occur while allowing the person to exceed or falsely represent what work can be performed. Sedative agents, including benzodiazepines, Z-drugs, alcohol, and cannabis may adversely alter work performance. A thorough medical evaluation and assessment should disclose the reasons for the pain medication or sedative use. If the pain condition resolves in less than six months, the person is technically not protected by the ADA. It is appropriate in such cases for the FFD evaluator to delay the examination until the acute pain condition has resolved and the person is off pain medication.

Chronic pain conditions, in which the pain is expected to last longer than six months, fall under ADA protection. The evaluation in these cases should include a complete medical and cognitive examination with specific attention on the person's function, rating the severity, limitations, irritability, and nature of the pain condition. Opioid therapy can cause cognitive clouding, therefore the evaluee's cognition should be evaluated using valid and appropriate tools. The evaluator should be aware of whether the FFDE is potentially detrimental to the evaluee and determine the risks that performing such an evaluation may make their condition worse.

Fitness for Duty Evaluations for Highly or Safety Sensitive Occupation Workers

A FFDE must be tailored to the many different job descriptions, workplace settings, and specific safety sensitive occupations. Many safety sensitive occupations require specific knowledge, skills, and cognitive performance levels that require specific and respective assessment. For example, a tremor detected in a neurosurgeon could be career ending, whereas the same degree of tremor in a psychiatrist can be regarded as a nuisance.

FFDE testing must be designed in a way that allows for performance assessment of the specific job functions required of the person being tested. Also, FFDE's are required by statutory mandate in certain industries. The Federal Motor Carrier Safety Administration, Federal Aviation Administration, Nuclear Regulation Commission, Occupational Safety and Health Administration (OSHA) all require certain workers (truck drivers, pilots, and asbestos workers) to undergo evaluations on a periodic basis. An overview of considerations and protocols is discussed later in this article, following a general discussion of details relevant to neurologically-focused FFDE's.

Scope of Fitness for Duty Evaluation From a Neurologist Perspective

Fitness for Duty Evaluations conducted by neurologists apply the specialist perspective to the assessment of the evaluee's physical, mental, and functional status to determine their capacity to safely perform work-related duties. While there is a well developed tradition of clinical practice guidelines and empirical research arising from the occupational medicine, psychiatric, and neuropsychological FFDE fields (Barron, 2015; Anfang et al., 2019, Bennett and Raymond, 2010, respectively), there is less of a clear tradition in the neurological literature. However, the neurologist is better positioned to conduct evaluations that extend beyond a general medical assessment to specifically focus on assessing neurological systems, diagnosing neuropathology, characterizing severity and prognosis, and therefore commenting on likelihood of incapacitation of occupational functions.

In general, the FFDE for a position with no established physical standards is summarized nicely by Allen (2002; see **Table 1**). The conceptual scope of an FFDE is informed by federal regulations (5 CFR§339.104), which consist of a framework that includes seven core elements required for an acceptable diagnosis relevant to an employment decision: history, clinical findings, diagnosis, prognosis, impact on activities, likelihood of sudden incapacitation, and a narrative for the medical basis of the conclusions. While steps 1−4 are familiar in clinical practice, the next two steps are specific to FFDE conclusions. Specifically, the "impact to abilities" is largely a judgment based conclusion (i.e., opinion on whether the nature and severity of symptoms is judged to incapacitate functions related to duties). The "likelihood of sudden incapacitation" is largely an empirically-derived opinion, though not wholly so (e.g., based on the published likelihood ratio of TIA after a single previous TIA on aspirin, it is thought etc.).

Neurologists commonly encounter a range of conditions during Fitness for Duty Evaluations. Epilepsy, neuromuscular disorders, traumatic brain injury (including concussion), encephalitis, stroke, demyelinating disease, and neurodegenerative diseases are among the conditions that can affect an individual's fitness for duty (Ferranti, 2017). Additionally, headaches and migraine, vertigo or disequilibrium, peripheral neuropathies and spasticity/paralysis, idiopathic hypersomnia, and behavioral disturbance are potential presenting symptoms that a neurologist may be called upon to evaluate in the context of impact to occupational functioning. Understanding the impact of these conditions on work performance is essential for accurate evaluations. Neurologists must be well-versed in the signs, symptoms, prognoses, and functional limitations associated with these neurological conditions.

Identifying signs and symptoms that necessitate additional specialist evaluations is a crucial aspect of comprehensive Fitness for Duty Assessments. Neurologists should be aware of when to refer individuals for psychiatric evaluations including substance use disorders, neuropsychological assessments, sleep studies, or tests for autonomic functioning to gather a more comprehensive

Table 1 Conceptual organization for Fitness for Duty evaluation.

Agency physician action	*Significant questions*
Evaluation medical documentation	1. Does the diagnosis make sense 2. Would the diagnosis be expected to cause the claimed disability? 3. Is it supported by medical evidence?
Is disability present?	1. Is some impairment in function documented 2. Is disability consistent with diagnosis and alleged severity of illness? 3. Would the level of impairment be expected to improve?
Compare capability to job description	1. What are supervisor's impression of capabilities 2. Any recent changes in performance levels? 3. Are there adverse personnel actions?
Give a medical opinion as to whether requested accommodation will enable disabled employee to perform essential function of job	1. Does the accommodation match the disability? 2. Does a medical basis exist for the accommodation?

understanding of an individual's fitness for duty. Collaborating with specialists from different fields ensures a comprehensive evaluation that accounts for the interplay between neurological and psychological factors relevant to occupational functions.

Triggering Fitness for Duty Evaluations

Fitness for Duty Evaluations can be triggered by proactive or reactive circumstances. Proactive evaluations occur during preemployment, annual, or age-triggered assessments for asymptomatic individuals. Reactive evaluations are prompted by specific factors such as performance problems, new medical diagnoses, or may arise due to sensorimotor impairments, distressed or disruptive behaviors, professional sexual misconduct, substance use, or cognitive changes. These triggers indicate potential concerns that may impact an individual's ability to perform their duties safely. Observations of impaired sensorimotor function, including gait abnormalities or tremors, can raise concerns about an individual's fitness for duty.

If emotional dysfunction such as depression, anxiety, inappropriate euphoria, mania with psychotic symptoms (such as visual hallucinations or delusions) are encountered, initial psychiatric/psychological FFDEs may recommend further a neuropsychiatric testing. Behavioral changes such as agitation, aggression, impulsivity, atypical consumption behavior, prominent sleep-wake disturbance, or hypersexual behavior may also warrant consultation for neurological FFDE if an underlying medical etiology is suspected, or may prompt the evaluating neurologist to consider neurobehavioral disorders and recommend neuropsychological and/or psychiatric FFDE consultation. In cases of suspected substance use or addiction, FFDEs are crucial to determine if an individual's substance use interferes with their job performance and poses risks to themself or others in the workplace. Neurological FFDEs should consider such conditions in the differential diagnosis, both as a primary or comorbid exacerbating factor in the evaluee's presentation. Such a distinction may be critical for prognosis vis a vis likelihood of success for remediation/treatment efforts. Cognitive changes, such as memory deficits or executive dysfunction (which may also manifest in poor or irrational decision-making), may affect an individual's ability to carry out complex tasks and decision-making processes, necessitating a thorough assessment and consultation with neuropsychology (Anfang et al., 2019; Bennett and Raymond, 2010; Ferranti, 2017). By recognizing such triggers, neurologists can be prepared for and initiate timely evaluations to address concerns and mitigate potential risks in the workplace.

Ethical Considerations

The FFD examiner must be thoroughly familiar with professional obligations to maintain confidentiality (Health Insurance Portability and Accountability Act (HIPAA), 1996; Genetic Information Nondiscrimination Act (GINA), 2008) plus the legal and regulatory considerations related to conducting FFDE (ADA, 1990, 2008; Title VII of Civil Rights Act, 1964; Age Discrimination in Employment Act, 1967; The Pregnancy Discrimination Act, 1964; Occupational Safety and Health Administration, 2012; Family and Medical Leave Act of 1993, 2006) and be able to demonstrate competence by education, training, supervised experience or appropriate professional experience (e.g., American Medical Association, 2001). The examiner should maintain accurate, organized documentation of the evaluation process that can withstand reasonable adjudicative scrutiny and should avoid potentially harmful dual relationships e.g., engaging the evaluee in treatment or evaluating functional abilities unrelated to the specific job description.

The conclusions and recommendations of FFDEs must relate to the specific job requirements and place less reliance on diagnosis and address the evaluee's weaknesses and strengths related to their specific job functions. This will provide understandable information for the inquiring party because diagnosis alone without consideration of specific job responsibilities can imply prejudice. Factors to consider in reporting FFDE findings include explaining to the evaluee, the limits of confidentiality, the limits, and uses of the report findings and how and to whom the report findings will be shared.

The utmost care needs to be taken to protect the information obtained together with the results and recommendations of the FFDE report. The FFDE process needs to be carried out in a private environment. The collateral information obtained, the subjective and objective data and the writeup all require storage in a protected manner. Any type of communication used to obtain or disseminate the evaluee's information should be securely protected and communicated only by an executed release of information. The results of the FFDE should be sent to the requesting source in a protected manner, such as by encrypted email or to a confidential fax machine.

When an evaluee is found not fit for duty, a report is sent to the employer and the evaluee is removed from their job usually to receive the necessary treatment, so they can become fit for duty. When the FFDE concludes that an evaluee is not fit for duty, it is the evaluator's obligation to report this finding to the employer, just as if the findings are fit for duty. The difficult and sometimes uncomfortable aspect for the neurologist evaluator is to know when to make a report to a regulatory body when the findings are not fit for duty.

If there is no employer such as a private practitioner, i.e., attorney or healthcare provider, the evaluator should notify the appropriate regulatory body when the evaluee is deemed impaired, yet refusing to comply with the recommendation to stop working and is at risk for harming the public. For instance, a physician is referred by their employer, a hospital, for an evaluation as there have been many complaints that the physician is having memory problems. The FFDE concludes that the physician is found to have early dementia and not fit for duty. The physician loses his admitting privileges as a result. But the physician continues his outpatient practice. As the physician was found to be impaired by dementia, it is imperative that the regulatory board and/or state Physician

Health Program (PHP) is notified of this finding. This can obviously be very uncomfortable. Many times, that responsibility falls onto the evaluator. The hospital may have fulfilled their due diligence by removing the physician's admitting privileges, which eventually triggers a report to the National Practitioner Data Bank. Most states have non-liability and immunity statutes that protect a report to the health regulatory board or PHP, as long as it is done without malice.

Assessment Methods

The assessment methods employed in FFDEs conducted by neurologists encompass several essential steps to ensure comprehensive evaluations and accurate outcomes. Upon receiving a referral, neurologists must obtain informed consent from the individual being evaluated. This step ensures ethical and legal compliance, as well as the individual's understanding and cooperation throughout the evaluation process. As expounded upon in the **Ethical Considerations** section of this article, delineation of treating provider versus independent medical examiner roles must be conducted prior to the evaluation.

Reviewing relevant medical and non-medical records is crucial to gather essential information about the individual's medical history, previous evaluations, and relevant work-related factors. These records provide valuable insights into pre-existing conditions, treatments, and the progression of any neurological disorders. However, unlike the traditional clinical setting, extra-medical record review is critical in a FFDE. The evaluating neurologist may seek out contemporaneous records from the workplace, interview supervisors and colleagues, as well as request external records that may inform in vivo manifestations of reported symptoms (e.g., criminal record, driving record, academic transcript, etc.) Furthermore, the evaluating neurologist typically will need familiarity with industry or statutory requirements for the evaluated position to understand the specific demands and qualifications necessary for the job. Compliance with industry standards ensures that the evaluation aligns with the specific demands of the occupation. In situations where such standards do not exist, consulting with human resources or supervisors of the occupational setting may be required.

A detailed clinical interview forms the cornerstone of the assessment process, allowing neurologists to gather past medical, psychiatric, developmental, and psychosocial histories. This includes queries for details that may not be spontaneously reported or detailed in records such as remote psychiatric episodes in remission, childhood symptoms of ADHD or learning disorder that were not contemporaneously diagnosed, subclinical elevated substance consumption habits, instability of housing, repeated divorce or unstable interpersonal relationship history, criminal and civil litigation. This comprehensive understanding of the individual's background helps identify potential risk factors, underlying conditions, and functional limitations. While these histories are briefly collected during clinical evaluations, in the FFDE, the contextual information is critical to increase confidence in the neurological diagnosis as well as determining whether additional specialist consultation is indicated (e.g., with psychiatry or neuropsychology).

The neurological examination plays a vital role in FFDEs. When conducted by a non-neurologist, the findings can inform whether such a specialist FFDE is indicated. When a neurologist conducting an FFDE assesses sensorimotor function, including coordination, reflexes, and strength, the expert attention can inform differential diagnosis in addition to the valuable information regarding an individual's physical capabilities. Formal cognitive screening should be a component of the neurological exam, rather than limited bedside techniques common to the clinic setting. Screens such as the MoCA, SLUMS, or MMSE are more sensitive to mild disturbances in memory, attention, and executive functioning that may be relevant to job requirements. Atypical findings may warrant neuropsychological FFDE to further delineate diagnosis or for characterizing severity of deficits and associated implications for occupational capacity.

In some cases, neurologists may need to order additional neurodiagnostic tests and consultations to supplement their evaluations. These may include neuroimaging studies, electroencephalograms (EEGs), or nerve conduction studies, among others. The purpose of these diagnostics is to provide objective data supporting the clinical assessment and to rule out or confirm suspected conditions, thereby strengthening the confidence in prognosis around occupational capacity as well as guiding potential remediation/treatment options (as well as providing baselines to reference in determining treatment-response).

It is important for neurologists to acknowledge that their evaluations may identify conditions requiring assessment by alternative specialists. Collaborating with a psychiatrist or neuropsychologist can provide valuable insights into the psychological and neuropsychological aspects impacting an individual's fitness for duty (Anfang et al., 2019; Bennett and Raymond, 2010). This interdisciplinary approach ensures a comprehensive evaluation, enhancing the accuracy of the assessment.

Reporting Fitness for Duty Evaluation Findings

The contents of a FFDE report should acknowledge the specific job description and include details on the reason for referral plus relevant background information including any relevant, medical, psychological, social, educational, and work history, plus behavioral observations, including mental status examination data, response to testing, test results and summary/conclusions. For safety sensitive positions a history of alcohol and drug consumption plus screening tests for common substance of abuse may be required. Reporting on the strengths and weaknesses of the individual in relation to their specific job description provides more understandable and useful information than reliance on a perfunctory diagnostic label, which may obscure the purpose of the evaluation. The

report should include communication with employer, employee and any other involved parties and should detail any limitations, ongoing monitoring requirements and any other workplace accommodations that are recommended.

It may be preferable to discuss the findings of the evaluation with the evaluee and release only the conclusions and recommendations of the FFDE to the employer and to provide the complete report to the evaluee's healthcare provider with appropriate consent.

FFDE reports should be treated with the same confidentiality as all medical records. If FFD reports are held by the employer or requesting source they should be treated as Protected Health Information and be kept confidential and in a secure file, separate from the employee's other records or personnel file.

Treatment and Recommendations to Restore Fitness for Duty

The FFDE is used to determine whether a worker can perform the essential functions and demands of their position without risking harm to themselves or others. FFDE's are also used to determine if a worker can safely "return to work" after they have been out of work because of a work-related or nonwork related illness.

FFDEs for "Return to Work" must be specific to the worker's occupation. For example, a school bus driver and a psychiatrist have different skill sets which would necessitate different types of examinations. A school bus driver would put themselves and the public at risk if they were found to be legally blind whereas a psychiatrist could do their job while "blind" with some accommodation. The FFDE must be specific to the job in question under The Americans with Disabilities Act (ADA, 1990; 2008). It is essential that the FFD evaluator must be aware of the specific physical, psychological, and cognitive demands of the occupation that they are evaluating for.

A "Return to Work" FFDE should be requested when:

- An employee presents with a physical or mental condition or disorder which could impair their ability to do their job.
- If a worker has been out of work for a significant amount of time due to a physical or mental condition or disorder.
- There is reasonable cause to indicate that the worker is impaired because of a physical or mental condition or disorder.

In many of these cases the reason to require a "Return to Work" FFDE is that the treating physician may not be aware or have limited to no knowledge of their patient's work demands or responsibilities and may therefore release the worker prematurely or the treating physician may release their patient at the patient's request putting the both the patient and the public at risk.

Many types of safety-sensitive occupation workers (physicians, airline pilots, law enforcement, nuclear engineers, etc.) diagnosed with a Substance Use Disorder (SUD) undergo specific treatment regimens and upon successful completion are found fit for duty, often with continued random monitoring and support in place. In these situations, it is the same treatment team that provides both the treatment and the determination that the worker is safe to return to their job. This singularity of treatment and FFDE by the same individuals raises the potential for conflicts of interest as there are economic reasons to extend the workers treatment beyond what is absolutely necessary before releasing them back to work and declaring them fit for duty. Accreditation, treatment norms and standards of care help to minimize this risk. The treatment teams for safety sensitive occupational workers have a thorough understanding of the occupational functions and the physical demands of these workers.

There are many moving parts to these types of evaluations and determination. The Safety Sensitive Occupational Worker is identified either because of illness or impairment. They are then referred for the FFDE. These evaluations can be done on an outpatient, residential or inpatient basis. The initial questions are answered. The treatment team which is usually made up of a physician, psychiatrist, social worker, family therapist and psychologist, collects and reviews pertinent medical records. They develop a unique understanding of the evaluee's occupation and specific demands. A comprehensive medical, psychological, and psychiatric history is obtained. A physical exam and mental status examination is conducted. A thorough review of systems is obtained as are the evaluee's medical records and medication history. Hair, nail, blood, and urine specimens may be sent for toxicology. A neurologic examination is completed, and neuropsychological testing is done as needed. Collateral information is obtained from family, friends, and co-workers with appropriate releases of information. The detailed evaluation with a formulation, and summary section with recommendations is presented to the evaluee and if appropriate to the employer. The evaluation recommendations include the need for further treatment if appropriate and what the treatment should look like and a what level of care. The evaluation will also conclude that the evaluee is fit for duty or not fit for duty. In either case there will be further recommendations.

If the worker is found fit for duty, they will be released to return to work with appropriate recommendations and accommodations. An example may include physical therapy or continue with individual and/or group psychotherapy.

If the worker is found not fit for duty, they will not be released to return to work and treatment recommendations will be made that should enable the evaluee to eventually return to work when they complete the recommended treatment. Evaluees are permitted and even encouraged to get a second comparable evaluation if they so choose.

Specific High-Sensitive Fitness for Duty Evaluation

Certain occupational domains require highly sensitive Fitness for Duty Evaluations due to the potential impact on society. Neurologists conducting evaluations in these domains must be well-informed about specific policies and regulations to ensure compliance

and accurate assessments. Occupational domains with stringent requirements include public transportation fields (e.g., those regulated by Federal Aviation Administration, Department of Transportation), healthcare providers (e.g., physicians, psychologists, nurses), first responders (e.g., police, firefighters, paramedics), officers of the court (e.g., lawyers, judges), positions regulated by the Nuclear Regulatory Commission, and military personnel. Each domain has unique policies and regulations in place to ensure the competence and safety of individuals working in these roles. For most of these positions the definitions and requirements of medical qualifications for federal civil employees acts as a general framework (5 CFR§339.104; the exception being private healthcare providers and military, the former without formal guidelines and the latter with specific). This framework covers seven core elements required for an acceptable diagnosis relevant to an employment decision: history, clinical findings, diagnosis, prognosis, impact on activities, likelihood of sudden incapacitation, and a narrative for the medical basis of the conclusions. Special attention to the potential of "direct threat" in the event of incapacitation is required. That is, a significant risk to the health or safety of the evaluee or others, which cannot be ameliorated sufficiently by reasonable accommodation. A neurological FFDE will typically arise in the event of an occupational medicine examiner or psychological examiner identifying symptoms or signs concerning for a potential neurological condition, for which a specialty opinion is required to opine on diagnosis and possibility of direct threat. Department and specific positions have additional terminology and procedures that are briefly described here but require more intimate familiarization by a neurologist conducting FFDEs for the respective entity.

In the field of public transportation, for example, the Federal Aviation Administration (FAA) and the Department of Transportation oversee the evaluation of pilots, air traffic controllers, and other personnel responsible for safe air travel. Aviation Medical Examiners (AMEs) are responsible for determining whether an evaluee is eligible to hold a medical certificate, based on review of medical records, a full physical exam, and consideration of FAA-specific guidelines related to scope of duties for the sought license (e.g., first class, second class, third class, Air Traffic Control Specialist). If this evaluation identifies a possibly aeromedically disqualifying medical or neuro/psychological condition, the AME will defer issuance of a medical certificate until appropriate specialist opinion/s are obtained. The FAA provides a guide with specific attention to neurological conditions (US Department of Transportation, FAA, 2023). This resource includes a summary of the specifications for an FAA compliant neurological FFDE and resulting documentation.

Public Safety professionals, such as law enforcement officers, firefighters, correctional officers, tactical teams, and first-responder emergency medical service personnel require thorough evaluations to assess their physical and mental fitness. The American College of Occupational and Environmental Medicine (ACOEM) has established medical practice guidelines for the medical evaluation of these professionals (ACOOEM, 2023). A neurological FFD evaluation should follow these steps of review, examination, and documentation in so far as they align with the referral question.

In the US Military, FFDEs are critical to ensuring the selection of (i.e., accession) and retention versus medical boarding (i.e., medical discharge) of service members to ensure readiness and operational effectiveness. The protocols for FFDE at all points are overseen by the Defense Health Board, which includes a Neurological/Behavioral Subcommittee. For the civilian neurologist practicing outside of the Department of Defense, the likeliest encounter for this type of FFDE is through request for an Impartial Medical Review (IMR). These evaluations conclude that. The most useful reference to orient a neurologist conducting such an FFDE is the Medical Standards for Military Service document (US Department of Defense, 2022).

There are no field-wide accepted protocols for FFDE's of healthcare providers (e.g., physicians, psychologists, nurses, and other care extenders). However, in contrast to the previously discussed positions, pre-emptive or pro-active FFDE's are not typical and recent attempts to create such programs have been met with professional and federal agency pushback (e.g., U.S. Equal Employment Opportunity Commission v. Yale New Haven Hospital, Civil Action No. 3:20-cv-00187). Rather, documentation of occupational impairment is typically required to initiate the FFDE, a protocol supported by many who publish in this domain (e.g., Cooper et al., 2018; Finlayson et al., 2022). The Federation of State Physician Health Programs has published Physician Health Program Guidelines (2019) for models and classification of functional impairment, resources which offer a framework for neurological FFDE's. Similarly, there are no formal procedures related to the triggering or content of FFDE's for officers of the court (e.g., lawyers and judges), though medical and bioethicist experts continue to publish on the matter (e.g., Hamm and Esplin, 2018; and response commentary along by Brendel, 2018).

Neurologists conducting Fitness for Duty Evaluations in these sensitive domains must stay up to date with specific policies and regulations to provide accurate assessments that uphold the standards and safety requirements of each profession.

Conclusion

A FFDE is an examination performed on a worker that determines health information about the worker's physical and/or mental condition as it relates to their ability to function within the scope of their job duties. When a neurologist is asked to perform a FFDE, it is important that they understand that they are not a treating physician and that the doctor-patient relationship in this context does not exist. The neurologist is performing an evaluation based on their expertise for an employer or other third party to where the results of the evaluation will be released.

The FFDE is requested if there is reason to believe that an employee cannot perform their job in a safe and successful manner because of a medical and/or psychological condition and that condition presents a safety risk to the evaluee or others. The FFDE can also be requested for other reasons including when an employee is ready to return following an extended illness.

Fitness for Duty evaluations should be administered in a manner consistent with federal regulations designed to prevent employment discrimination. The Equal Employment Opportunity Commission (U.S. EEOC, 2000), the Americans with Disabilities Act (ADA, 1990) and the ADA Amendments Act (ADAAA, 2008) are designed to ensure equal job opportunities for protected classes and to prevent employment discrimination.

FFDE must be designed and executed in a way that allows for performance assessment of the specific job functions required of the person being tested. For example, a commercial airline pilot has a completely different skill set requiring different testing than an evaluation for a psychiatrist.

The neurologist is better positioned to conduct evaluations that specifically focus on assessing neurological systems and characterize the severity and prognosis of a condition, and comments on the impact that the condition(s) may have on occupational functions.

Even though the FFDE neurologist is generally not the treating physician, they must adhere to maintain confidentiality of Protected Health Information and understand the regulatory considerations related to conducting FFDE described in **Triggering Fitness for Duty Evaluations** section. The neurologist or other evaluator must demonstrate competence by education, training, supervised experience, and appropriate professional experience. The conclusions and recommendations of FFDE must relate to the specific duties of the evaluee addressing the evaluee's weaknesses and strengths related to their specific job functions.

The neurologist must obtain informed consent prior to the evaluation with a section that explains that the neurologist is not treating the evaluee. The neurologist must review the relevant medical and psychiatric records including the evaluee's previous evaluations (if any), and relevant collateral and work-related factors. The neurologist must have a complete understanding of the evaluee and the reason for the evaluation. The neurologist may need to order medical, neurologic and toxicologic tests. They may even need to refer the evaluee for another specialist's expert opinion including that from a cardiologist, radiologist, or medical review officer.

The FFDE report should include the specific job description and the reason for the referral. It should include any relevant, medical, psychological, social, educational, and work history, plus behavioral observations, including mental status examination, response to testing, test results and a summary with conclusions. FFDE reports should be treated with the same confidentiality as Protected Health Information.

The FFDE is requested to determine whether a worker can perform the essential functions of their job without risking harm to themselves or others or to determine if a worker can safely "return to work" after an illness. FFDE should be specific to the worker's occupation. Certain occupations require highly sensitive Fitness for Duty Evaluations due to the potential impact that the evaluee's job has on society. Neurologists conducting evaluations in these domains must be well-informed about specific policies and regulations to ensure compliance and accurate assessments.

The FFDE is a highly specialized area of neurology and medicine. The practitioner should be well trained, experienced with the nuances of the evaluee's duties or job and be able to utilize colleagues and supervision when needed. The opinions rendered may be subject to review in administrative courts and can have grave influences on the career, finances and over all life of the evaluee. This work should not be undertaken casually.

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