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Expectations of the court as viewed by attorneys and advocates with regard to neuropsychological evaluations in motor vehicle accident claims in South Africa

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Context of the study

Forensic Neuropsychology applies neuropsychological principles and practices to matters that pertain to legal decision-making.

Forensic neuropsychologists must provide the trier of facts with specialized information regarding brain-behavior relationships.

The duty of the forensic neuropsychologist is to provide information based on scientifically-validated neuropsychological principles and clinical methodology that is pertinent to the "forensic question" at hand.

Not just whether the patient has dysfunction, but whether the dysfunction results from the event under consideration

"Does the plaintiff suffer from significant cognitive deficits as a result of the head injury sustained in a motor vehicle accident?"

Commonly, a battery of tests is used to assess neuro-cognitive functions in order to answer the "forensic question".

Different neuropsychologists may construct batteries from different selections of tests.

Some batteries are composed according to the client's presenting complaints and the referral question ("flexible battery").

Other neuropsychologists begin with a specific set of tests and seldom deviate from this selection ("fixed battery").

Regardless of which approach is used, the results of the battery of tests often form the primary basis for the neuropsychological testimony in answering the forensic question.

In South Africa there is no formal training programs, licensure requirements, or professional organizations devoted specifically to forensic neuropsychology.

There is no formal process for assigning the title of "forensic neuropsychologist" upon a practitioner.

The courts expect a forensic neuropsychologist to have further training in the legal arena.

Many psychologists over night decide that they are neuropsychologists.

Letterheads are changed to include "special interest in neuropsychology" and somehow that qualifies them.

Deciding on the format of evaluation is made by the clinician based on his or her level of experience or college training, and not specialized training.

However; there is no accredited training available on a national educational level.

The general trend is for practitioners to attend conferences, participate in Continued Professional Development (CPD) training or formal training overseas.

This is completely driven by the individual and the knowledge base is not unified.

This results in poor quality of work due to limited training, which results in frustration from legal professionals.

The only option for clinicians is to individually determine the court's expectations as well as the prescribed methodology of neuropsychological evaluations.

By following international and local trends, clinicians in South Africa, try to evaluate their clients using the most current and appropriate neuropsychological materials available, but the frame of reference is falling back onto the assessment methods learnt in college.

The South African Medico Legal Association (SAMLMA) has presented several talks and workshops in an attempt to train medical professionals in the legal context.

To date no exclusive model for South African psychologists is available which explains legal expectations.

Therefore, given the relatively nascent nature of neuropsychological practice, many questions remain unanswered about neuropsychological practitioners who apply their expertise to motor vehicle accidents (MVA) claim cases due to limited formal training.

It is disconcerting to find that psychologists' knowledge fall significantly short of what lawyers expect of them.

There is no consensus between neuropsychologists as to what the courts expect from a neuropsychologist as an expert in South Africa.

This results in unnecessary legal criticism about neuropsychological evaluations.

In collaboration with the North-West University, Potchefstroom, South Africa, 26 experienced legal practitioners (attorneys, advocates and 2 acting judges) were interviewed to determine the South African court's expectations regarding neuropsychological evaluations of claims in motor vehicle accidents.

Therefore, the aim of this study was to determine the court's expectations as viewed by attorneys and advocates regarding neuropsychological evaluations of claims in motor vehicle accidents in South Africa.

Participant Recruitment

After ethical clearance was obtained from the North West University, South Africa (ethical clearance number: NWU-00197-14-S1) the researcher started the gathering of data.

Purposive sampling of experienced legal practitioners (attorneys and advocates) was done.

They were selected in the Gauteng and North West province and were identified by means of a list available at the High Court indicating which practitioners work in the context of motor vehicle accident claims.

Sample

26 participants were included and seen as representative from the field of legal practitioners.

As part of inclusion criteria they had to be proficient in English or Afrikaans and have at least 10 years' experience of matters arising from motor vehicle accident claims.

The process started with a personal interview with the senior partner of each firm where the researcher made the study known to them.

They were provided by a written brochure setting out the aims of the study with the request that he/she inform his/her employees and colleagues about the study.

The researcher did follow-up after seven days to enquire if they were interested to participate in the study. Thereafter, the willing participants were contacted telephonically or by email to arrange a date for the interview.

The interviews were recorded in a private venue which suited the participant, but also for confidentiality reasons.

Written consent was obtained from all the legal practitioners pertaining.

Data collection

Legal professional expectations were explored by means of semi structured interviews which were guided by the research topic.

Interviews were audio recorded and verbatim transcribed.

The interview was guided by the question:

What is your expectations of neuropsychological evaluation and reports in motor vehicle accident claims?

Data analysis

The interviews were recorded, transcribed and analyzed by means of thematic analysis. Initially open coding was used in order to identify patterns and themes. Constant comparison was used to generate and refine categories and sub-categories.

Analysis was completed when data saturation was reached and no new themes emerged.

Agreement between the researchers was reached on all the themes.

The analysis of the participant responses yielded four dominant themes:

Theme 1:

Findings must be clear to provide an understandable psychological prognosis (an explanation of the difference between pre- and post-morbid functioning) to determine Loss of Earnings.

This aspect was continuously repeated by the legal practitioners who indicated that a clear comparison must be done between the pre-morbid level of functioning of the client and the post-morbid, post-accident clinical picture.

Emphasis is put on the effort that must be undertaken by the neuropsychologist to ensure that the deference between pre- and post-morbid clinical pictures are clearly highlighted.

A need was voiced that a clear psychological prognosis must be provided to determine loss of earnings. Therefore, to indicate the difference between pre- and post-morbid.

There is also an expectation for a diagnostic finding (DSM5) together with quantification of the proposed psychological treatment.

Theme 2:

Illustrate the link between collateral findings / opinion and the neuropsychological picture.

This was consistently voiced by all the legal professionals, that a link must be made between collateral information (e.g. medical records of other expert reports) and the clinical picture identified during the neuropsychological evaluation.

The lawyers indicated that this is important, especially when they are working on a big case where the loss will be significant.

Theme 3: Format of report

Referring to the report format the legal professionals indicated specific feedback regarding their requirements.

They were outspoken about three themes in this context, namely the structure of the report; length of the report as well as the test descriptions.

Report structure

Legal representatives insisted on a logical flow of a report. However, due to the lack of formalized training some reports were reported to be very confusing, e.g. unclear findings and conclusions.

Referring to standardized norms, lawyers added that this results in confusion because sometimes norms are not explained. The request was to clearly indicate if the finding provided any value to the clinical picture.

Measuring instruments / Test descriptions

It was indicated that findings need to be explained in context of a test or tests. Referring to measuring instruments and the reporting thereof, the legal professionals indicated that it is more understandable if both are grouped together, because if separated they tend to be confused as to what the tests were supposed to measure.

Often explaining the test involves the use of technical terms, which confuses the legal reader.

It was also indicated that there is too much focus on the test results and too little elaboration on the behavioral implications of injuries.

Length of the report

Legal practitioners were ambivalent towards the length of neuropsychological reports.

Some are of the view that the length is excessive, and at times frustrating. The length are due to unnecessary repetition.

The request was to get to the point quicker.

Other legal practitioners were indifferent to the length of the report because it is read to find the answer to the "forensic question".

Theme 4: Further Legal Training

Legal practitioners indicated that it would be helpful for psychologists to have basic training into the legal process of claims.

This will create some continuity when psychologists have to provide joint minutes and/or provide expert testimony.

Joint minutes

In order to save the court time and to clarify medical issues at hand, experts come together to compile a very brief report otherwise known as a "joint minute".

These reports consist of the issues agreed between the experts, resulting in a speedier resolution of the matter.

Study Limitations and Recommendations

Due to the diversity of neuropsychological evaluations, generalizability is limited. In this study, only legal professionals in Gauteng and the North West province were included, therefore it would be more valid if all the provinces formed part of the study.

This is in particular important as some legal practitioners feel that the courts in the various provinces do not function in the same way when it comes to dealing with claims.

The findings provide the opportunity to understand the complexity of claims and the expectations of the court from neuropsychologists in South Africa.

Limited training or the lack of training is something that needs to be taken to heart in the training of future neuropsychologists.

Tertiary institutions have approved training in the category of neuropsychology, but the forensic psychology option has not been finalized.

Based on the findings there is a great need for training in Forensic Neuropsychology. Therefore, a model of standard requirements for forensic / neuropsychological reports must be created.

Conclusion

South Africa still has a long way to go, however, the merging of the principles of forensic neuropsychology and the courts assist with a clearer understanding of legal expectations.

This study indicates that neuropsychological practitioners have a lot of value to provide to the South Africa courts, however they need specialized training in order to satisfy the expectations of the court.

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