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Defining Malingering

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ABSTRACT: Malingering, also called shamming illness or goldbricking, is the false and fraudulent simulation or exaggeration of physical or mental disease or defect, performed in order to obtain money or drugs or to evade duty or criminal responsibility, or for other reasons that may be readily understood by an objective observer from the individual's circumstances, rather than from learning the individual's psychology. Malingering is seen in apparently normal children, students, test subjects, spouses, and adults. It is not a mental disorder. Malingering may coexist with the antisocial personality disorder, with various factitious disorders, such as the Ganser Syndrome and the Munchausen Syndrome, with the hysterias and with traumatic neuroses and other mental disorders. A review of definitions and a medicolegal discussion are presented. Malingering is an *act,* which is distinguished from a legal or mental *status.* Failure to distinguish act from status accounts for the wide disparities in definitions of malingering.

KEYWORDS: psychiatry, malingering

Malingering[2] has been defined in such widely differing terms—from criminal shamming of illness to focal, neurotic suicide—as to tax one's credulity. The purpose of this article is to review some of these definitions and to improve their credibility by showing that some describe the act of malingering, which is a sociolegal act, in contrast to others that describe the personality of the malingerer or his or her mental status.

The Act

Most definitions of malingering describe malingering as shamming illness with the wrongful intent to perform civil or criminal fraud. Malingering is thus the false and fraudulent simulation or exaggeration of physical or mental disease or defect.[3] It may be defined more broadly as all forms of fraud relating to matters of health [*1*]. Because the questions of intent, falsity, and fraud are determined in law by the judge or jury and not by mental health experts, a man who was accused of a crime was found by the jury to have thrown a fraudulent fit when he secreted soap under his tongue and then in the courtroom quite vigorously thrashed about, foaming at the mouth [*2*]. Miller and Cartlidge [*1*] amplified an earlier definition of malingering to include simulation of disease or disability that is not present, "much more often, gross exaggeration of minor disability," and "the conscious and deliberate attribution, for personal advantage, of a disability, to an accident

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[2]The word may be derived from French *malingre,* sickly, or Latin *malus aeger,* evil disposition.

[3]This definition is based on those found in Dorland's and Steadman's medical dictionaries and Black's law dictionary.

or injury that did not, in fact, cause it. This last occurs when there is tangible organic disability: Fits from which the patient has knowingly suffered for many years, may be attributed to a minor head injury sustained in a recent accident" [*1*]. For such a patient to conceal his preexistent seizure disorder is civil or criminal fraud.

The American Psychiatric Association (APA) comprehensive diagnostic manual [*3*] clearly distinguishes malingering from mental disorders by placing malingering first in a list of 13 conditions that are not attributable to a mental disorder such as marital conflict or occupational problems. The essential feature of malingering, according to this official manual, produced after debate and field trial, "is the voluntary production and presentation of false or grossly exaggerated physical or psychological symptoms. The symptoms are produced in pursuit of a goal that is obviously recognizable with an understanding of the individual's circumstances, rather than of his or her individual psychology" [*3*]. The examples given in the manual of such obviously recognizable goals are to obtain money, to obtain drugs, to evade duty, or to evade responsibility for a crime. (The plea of "not guilty because of insanity" asserts a lack of criminal responsibility.) A select committee of the APA warns psychiatrists to be suspicious of malingering on discovery of any combination of the following situations: a medicolegal context, a marked discrepancy between the person's claimed distress or disability and the objective findings, a lack of cooperation with the diagnostic or treatment program, or the presence of antisocial personality disorder [Ref *3*, p. 331].

The antisocial personality disorder (previously, psychopathic personality) is present in about 3% of U.S. males and is frequently associated with substance use disorders, which are rife. Less frequently, it is associated with somatization disorders or hysteria [*4*] as well as with histrionic personality disorder [*3*]. Unlike the law, which permits of only a single proximate cause of an event at bar, psychiatric medicine uses multiple diagnoses in accounting for abnormal behaviors and psychological syndromes, just as the *International Statistical Classification of Diseases, Injuries, and Causes of Death* uses multiple diagnoses. But in addition to documenting such diagnoses, psychiatrists are alerted to note malingering, which is not a mental disorder.

A legally mentally ill person can simulate legal sanity. Halleck [*5*] has empathetically described how a mentally disordered prisoner may strive to appear sane, because of the poor image of mental illness on the streets and in the prison yard, compared to the simpler and more acceptable "hang-tough" image of the macho convict. In the converse case, where insanity defense is asserted but fails, the court has found that at the time of the crime the accused was not suffering from a mental disease or defect that would relieve him or her of legal responsibility for the crime. A number of such insanity defenses, in my experience, are malingered.

Act Versus Status

The act of malingering differs from the mental status of the malingerer. An act is anything done with volition, an affirmative expression of will or purpose. Status is a condition, which in law can be the legal condition of a person who belongs to a class that enjoys certain privileges or is subject to certain limitations. Mental status, which is a person's current mental condition, has been documented by many authorities, who agree on guidelines for its description [*6,7*].

An act is also distinguished from a status in statute and case law. Under federal statute and many state statutes, a "status offender" is a minor whose act—truancy, curfew violation, or possession of alcohol or tobacco—would not be an offense if he or she enjoyed the status of being an adult. Key cases clearly differentiate the act of using a drug from the status of being a drug addict. In such a case, *Robinson v. California,* the U.S. Supreme Court held that it was constitutional to punish a person for performing a wrongful act, but not for his or her mental status [*8*].

"Normal" Malingerers

Civil malingering under the cloak of research could have been performed by D. L. Rosenhan and eleven of his collaborators [*9,10*]. They requested admission to psychiatric hospitals, falsely complaining of hearing voices which said "empty," "hollow," and "thud," which Rosenhan claimed is a feature of "existential psychosis"—a term he did not define and which does not appear in the literature [*10*].

Children can go beyond telling tall tales [*11*] to malinger in hospitals and schools [*12*], feigning, in an ethnic and social deception, a nonexistent mental retardation [*13-15*].

In personality testing, it is popularly known that individuals will tell a "white lie" to falsely attempt to appear normal or to conform to the model form of behavior or even to appear sick; a popular book includes a chapter entitled "How to Cheat on Personality Tests" [*16*]. While the British describe this form of malingering as "dissimulation" [*17,18*], Americans term it "faking good," or the opposite, "faking sick." The Rorschach test can successfully be faked sick [*19*] but faking sick on the Minnesota Multiphasic Personality Inventory, after subjects were coached from the MMPI manual, could sometimes be detected. Faking organic brain damage on psychological testing can readily be detected [*19,20*].

Perhaps invoking their equal rights, examiners can deceive their subjects. Using an astrology book purchased at a newsstand and changing only a few words, several examiners learned that college students accepted as personally valid the "universally valid characteristics" that were taken from the astrology book. The students accepted these mass-produced sketches as personally valid whether they had been given psychological tests or not; their friends confirmed the horoscopes' "validity" [*21-23*].

Spouses are familiar with malingering: "Not tonight, dear, I have a headache."

Adults who believe that people are weak, cowardly, and easily molded by others' pressure and who advocate manipulative tactics such as guile and deceit—the Machiavelli personality—were shown to successfully manipulate others in a variety of experimental settings [*24*]. Children as young as eleven years of age, tested by the Kiddie Mach scale, showed the same antisocial personality trait, but not an antisocial personality disorder. Machiavellian parents had Machiavellian children, showing that big Machs have little Machs.

Mentally Ill Malingerers

Rare but vexatious conditions in which one person may both malinger and also at the same time perform behaviors that are diagnostic of a mental disorder are the factitious disorders, including the Ganser Syndrome and the Asher-Munchausen Syndrome.

Josef Ganser noted prisoners who gave ridiculous answers to simple questions. When asked how many legs a horse has, one said "six," suggesting the description "balderdash syndrome." The very few [*25*] prisoners or civil patients who reply thus seem to have mild mental deficiency and hysterical or seizure-like symptoms, but maintain their symptoms with consistency and durability, unlike the malingerer [*26*].

In 1951, Asher described a syndrome involving hospital hoboes or peregrinating pseudopatients who repeatedly submitted themselves to unnecessary medical and surgical procedures. Because of their incredible adventure stories, he called this the Munchausen Syndrome. Features of this condition include dramatic, unusual symptoms, fantastic storytelling or "pseudologia fantastica," and wandering from hospital to hospital; many such patients are impostors [*27*] who often are antisocial personalities. Asher noted some likelihood of mental disorder in the patient, who has a "psychological kink that produces the disease," while psychiatrists [*28,29*] have observed that the Munchausen patient is consciously aware that he is acting an illness, but unlike the malingerer cannot stop the act. Most of these pseudopatients leave the hospital before psychiatric consultation, but the few who have been studied [*26-31*] were found to have rejecting or sadistic parents, associations

with chronic illness or death, histories of placement in institutions, and antisocial behavior and suicide attempts, resembling a large number of persons and patients without this syndrome. There is thus no distinctive personality profile for malingering. Ford observed that malingering coexists with Munchausen Syndrome [*31*].

Factitious disorders include the Ganser and the Asher-Munchausen Syndromes and their variants. Factitious, meaning made by humans, is defined psychiatrically as not natural [Ref *3*, p. 285], as in law. In a factitious disorder, the patient voluntarily reproduces symptoms, just as the malingerer does, but the factitious patient's goal and his or her anticipated gains, in contrast to the malingerer's, are not consciously clear or rationally understandable in light of the environmental circumstance. (This differential resembles the legal distinction between intent, which is objective and predominantly conscious, as contrasted to motive, which is subjective and may contain a substantial unconscious component.)

The factitious disorder is "almost always superimposed upon a severe Personality Disorder" [*3*]. Thus a person who voluntarily and fraudulently presents symptoms is malingering if his or her goals are clear and understandable in light of environmental circumstances, but may also have a factitious disorder if the goals are irrationally unclear and not understandable by this environmental test.

In medicine, syphilis is the great simulator, malingering the great impostor, and hysteria the great imitator. Hysteria, now logically divided into somatiform disorders and dissociative disorders, are distinguished from the imposture of malingering because the symptoms of hysteriform disorders are not under voluntary control. Harper [*4*] notes that both hysteria and malingering can exist in one individual.

In traumatic neurosis, as described by Oppenheim in 1889, a molecular commotion of the nervous system was said to produce the symptoms [*32*]. On the other hand, in the accident neurosis noted by Miller [*1,33*], a mild emotional trauma is the precipitant. In the 1980 APA manual, a major emotional trauma is described as the precipitating event. For the latter, the appropriate emotional stressor is an "uncommon experience" such as an earthquake, bombing, or torture, while automobile accidents are cited as only *occasionally* producing a posttraumatic stress disorder.

Some such patients also malinger. In a large series, Miller [*33*] reports that more than half of his traumatic neurosis patients do not have a psychological event as the precipitant [*34,35*], but do have a societal striving: "The exploitation of his injury represents one of the few weapons available to the unskilled worker to acquire a larger share . . . in the national capital." He proposes that the employee may have a motive of vengeance toward the employer, his establishment, or the social system. Socarides [*36*], in a study of this motive, showed how the worker not only can "get even," but can "get more than even" with what he conceives as an affluent, exploitative society.

Malingered Focal Suicide

A very small number of psychiatrists have believed that malingering is a mental disease. Menninger [*37*] first cited a standard description, stating that "malingering is all forms of fraud relating to sickness or injury," but then sounded an intermediate note when he said, "to the extent that a neurotic person consciously makes use of the secondary gains of his illness, he is, of course, a malingerer." (In simplified form, "primary gain" is the reduction of internal tension that is unconscious [*38*]; elementally, it is the neurotic's avoidance of facing the Oedipus complex [*39*]. "Secondary gain" is the obvious and conscious advantage a person gains from attention and help, monetary compensation, pity, or release from responsibility [*40*].)

Menninger [*41*] also alluded, however, to a few dramatic cases of what we would now call a factitious disorder, in which the individual severely injured himself, both physically and socially. He called these injuries self-mutilation, and suggested that those patients who ex-

ploit or capitalize on the secondary gain of neurotic illness (and therefore malinger) have a potential for deep unconscious guilt. In response to this presumed psychic guilt, Menninger felt, the malingerer attempts a form of "focal suicide" [*37*].

To support further his contention that the malingerer is mentally ill, Menninger [*42*] engaged in a rare piece of circular reasoning: "In the compulsive deception represented by the feigning of disease . . . the malingerer does not himself believe that he is ill, but tries to persuade others that he is, and they discover, they think, that he is *not* ill. But the sum of all this, in the opinion of myself and my perverse minded colleagues, is precisely that he *is* ill, in spite of what others think. No healthy person, no healthy-*minded* person, would go to such extremes and take such devious and painful routes for minor gains that the invalid status brings to the malingerer." Similarly, Diamond [*43*] recognized the rarity of his related position when he said, "I realize that the law views this matter differently, but I think that anyone who commits a serious crime, particularly murder, is very apt to be suffering from serious mental abnormalities."

Eissler, an eminent psychoanalyst, entertained a similar approach but then recanted, saying that "malingering is the planned simulation of symptoms for gainful purposes" [*29*].

Theory of Nonexistence

An even smaller number of psychologists or psychiatrists deny that malingering can exist. These experts contend that no thought or behavior is altogether a conscious one, so that the malingerer has at least some unconscious component in his intent to malinger. Any intent that is unconscious, cannot be voluntary, they reason, so that the malingering behavior is actually neurotic and not true malingering. Unfortunately for this contention, however, statutes and case law hold that certain behavioral acts demonstrate an inherent intent. Thus performing an act that has a high probability of causing physical harm is a legal showing of intent to harm. This legal principle makes it inefficacious to enter either the conscious mind, or the unconscious, of the subject, when we can rely primarily on his or her objective behavior.[4]

Conclusion and Recommendations

We have distinguished the act of malingering, which is the performance of medical fraud, from the status of the malingerer, which may vary from that of the apparently normal individual through many forms of mental disorder. This distinction lends credibility to the remarkably variant definitions of malingering that appear in the literature.

Since malingering is a wrongful, illegal act but is not a diagnosis of a mental disorder, it is wise for diagnosticians to keep in mind some basic legal principles, noted above, when they consider the presence or absence of malingering. Before reporting malingering, it is very wise to follow the basic rules of confidentiality and privilege [*44*].

References

[*1*] Miller, H. and Cartlidge, N., "Simulation and Malingering in Relation to Injury of the Brain and Spinal Cord," in *Brock's Injuries of the Brain and Spinal Cord*, E. Feiring, Ed., Springer, New York, 1974.

[*2*] Keschner, M., "Simulation (Malingering) in Relation to Injuries," in *Injuries of the Brain and Spinal Cord*, S. Brock, Ed., Springer, New York, 1960.

[*3*] American Psychiatric Association, *Diagnostic and Statistical Manual III*, 3rd ed., Washington, DC, 1980, pp. 23, 241, 242, 309, 331, 286, and 287.

[4]California's Jury Instructions (Criminal, 3:34) state: "The intent with which an act is done is shown by the circumstances attending the act, the manner in which it is done, the means used, and the soundness of mind and discretion of the person committing the act."

[4] Harper, E. O., "Malingering," in Cantor, P. D., *Traumatic Medicine and Surgery for the Attorney*, Butterworth, Washington, DC, 1962, p. 43.
[5] Halleck, S., "The Criminal's Problem with Psychiatry," in *Readings in Law and Psychiatry*, R. C. Allen et al, Eds., Johns Hopkins University Press, Baltimore, 1975, pp. 51-54.
[6] Lewis, N. D. C., *Outlines for Psychiatric Examination*, State Hospital Press, Utica, NY, 1943.
[7] Nyhan, G. W., "The Mental-Status Examination," in *Psychiatric Clinical Skills in Medical Practice*, G. V. Balis, Ed., Butterworth, Boston, 1976.
[8] *Robinson v. California*, 82 S. Ct. 1417 (1962).
[9] Wolitzky, D. L., "Insane and Feigned Insane: A Reply to Dr. Rosenhan," *Journal of Psychiatry and Law*, Vol. 1, 1975, pp. 463-473.
[10] Spitzer, R. L., "More on Pseudoscience," *Archives of General Psychiatry*, Vol. 33, 1976, pp. 459-470.
[11] Gorman, W. F., "Tall Tales and Imaginary Companions," *Journal of the American Medical Association*, Vol. 223, 1975, p. 367.
[12] Creer, T. L. et al, "Managing a Hospital Behavior Problem: Malingering," *Journal of Behavioral and Experimental Psychiatry*, Vol. 5, No. 4, July 1974, pp. 259-262.
[13] Soiffer, A., "Children Who Deceive Psychologists," *Journal of Clinical Psychology*, Vol. 4, Spring 1975, pp. 27-28.
[14] Scott, M. B., "Wishing Will Make it So," *Mental Retardation*, Vol. 13, 1975, p. 27.
[15] Farber, L. H., "Lying on the Couch," *Journal of Existential Psychology and Psychiatry*, Vol. 13, 1974, pp. 125-132.
[16] Whyte, W. M., Jr., *The Organization Man*, Simon and Schuster, New York, 1956.
[17] Eysenck, S. B. G. and Eysenck, H. J., "Attitudes to Sex, Personality, and Lie Scale Scores," *Perceptual and Motor Skills*, Vol. 33, Aug. 1971, pp. 216-218.
[18] Power, R. P. and O'Donovan, D., "Detection of Simulation on the MMPI by Subjects Given the Rationale of This Scale," *British Journal of Psychology*, Vol. 60, No. 4, 1969, pp. 535-541.
[19] Maloney, M. P., Glasser, A. O., and Ward, M. P., "Malingering: An Overview," in *Identification of Malingering for Legal Purposes*, S. Pollack, Ed., University of Southern California Institute of Psychiatry and Law, Los Angeles, June 1980.
[20] Bruhn, A. R. and Reed, M. R., "Simulation of Brain Damage on the Bender-Gestalt by College Students," *Journal of Personality Assessment*, Vol. 39, No. 3, June 1975, pp. 244-255.
[21] Kelly, D. M., "Clinical Reality and Projective Technique," *American Journal of Psychiatry*, Vol. 33, 1951, pp. 459-470.
[22] Forer, B. R., "The Fallacy of Personal Validation," *Journal of Abnormal Social Psychology*, Vol. 44, 1949, pp. 118-123.
[23] Sundberg, N. D., "The Acceptability of Fake and Bonafide Personality Test Interpretation," *Journal of Abnormal Social Psychology*, Vol. 50, 1955, pp. 145-147.
[24] Kraut, R. E. and Price, J. D., "Machiavellianism in Parents and Their Children," *Journal of Personality and Social Psychology*, Vol. 33, No. 6, June 1976, pp. 782-786.
[25] Halleck, S., *Psychiatry and the Dilemma of Crime*, Harper and Row, New York, 1964, pp. 304-306.
[26] Arieti, S. and Meth, J. M., "Rare, Exotic Psychiatric Syndromes," in *American Handbook of Psychiatry*, S. Arieti, Ed., Basic Books, New York, 1969, p. 546.
[27] Deutsch, H., "The Impostor," *Psychoanalytic Quarterly*, Vol. 24, 1955, pp. 483-505.
[28] Bursten, B., "On Munchausen's Syndrome," *Archives of General Psychiatry*, Vol. 13, Sept. 1965, pp. 261-268.
[29] Gelenberg, H. J., "Munchausen's Syndrome with a Psychiatric Presentation," *Diseases of the Nervous System*, Vol. 38, 1977, pp. 378-380.
[30] Bagan, M., "Munchausen Syndrome," *Boston Medical Quarterly*, Vol. 44, Sept. 1962, pp. 113-119.
[31] Ford, C. V., "The Munchausen Syndrome," *Psychiatric Medicine*, Vol. 4, No. 1, 1973, pp. 31-45.
[32] Linn, L., "Neurosis Following Head Injury," in *Brock's Injuries of the Brain and Spinal Cord*, E. Feiring, Ed., Springer, New York, 1974.
[33] Miller, H., "Accident Neurosis," *British Medical Journal*, Vol. 1, 1961, pp. 919-925 and 992-998.
[34] Naish, J. M., "Problems of Deception in Medical Practice," *Lancet*, Vol. 2, 1979, pp. 139-142.
[35] Gorman, W. F., "Whiplash: Fictive or Factual?," *Bulletin of the American Academy of Psychiatry and Law*, Vol. 7, 1979, pp. 245-248.
[36] Socarides, C. W., "On Vengeance: The Desire to Get Even," *Journal of the American Psychoanalytic Association*, Vol. 14, 1966, pp. 356-375.
[37] Menninger, K. A., *Man Against Himself*, Harcourt, New York, 1956, p. 230.
[38] Eissler, K. R., "Malingering," in *Psychoanalysis and Culture*, C. Wilbur, Ed., International University Press, New York, 1951.

[39] Fenichel, O., *The Psychoanalytic Theory of Neurosis*, Norton, New York, 1945, pp. 234, 461, and 502.
[40] Laughlin, H. P., "Overconcern with Health," *Medical Annals of the District of Columbia*, Vol. 23, No. 2, 1954, pp. 96–105 and 147–152.
[41] Menninger, K. A., "Psychology of a Certain Type of Malingering," *Archives of Neurology and Psychiatry*, Vol. 33, 1935, p. 507.
[42] Menninger, K. A., *The Vital Balance*, Viking, New York, 1963, p. 208.
[43] Diamond, B., "Simulation of Sanity," *Journal of Social Therapy*, Vol. 2, 1956, pp. 158–165.
[44] Holder, A. R., *Medical Malpractice*, Wiley, New York, 1978.

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