

## **Test of Memory Malinger (TOMMS).**

Was this test given in a case where the plaintiff was not claiming memory problems or a brain injury? (Like in a case involving depression/PTSD, etc.)

If so, why?

It has no bearing.

In fact, a test that measures effort in memory can't be used, a priori, to conclude poor effort or malingering on a personality inventory which is not a memory instrument, and visa versa. <sup>i</sup>

Therefore, a claim of malingering memory problems can't be used to claim the results also mean the patient malingered depression.

According to the TOMMS manual itself, any individual scoring below a 45 on any trial is considered to be in the range of potential malingering. <sup>ii</sup>

Think about it for a minute. Each trial has only 50 questions. That means if you make less than a 90% on this test you flunk.

Do you know any teachers that use such a rigorous system? If they dared to even try to flunk students who got 90% correct there would be a line of angry parents at their door.

Furthermore, there are some potential problems with the test itself.

The influence of psychological distress is not known further, additional studies of reliability and validity e.g. its utility with respect to other measures to detect malingering, are needed. <sup>iii</sup>

A review of the TOMMS manual itself confirms that the test was validated with "at risk" malingerers and "simulated malingerers." Translation: no malingerers in normative study so -- WE DON'T EVEN KNOW HOW MALINGERERS WILL ANSWER THIS TEST. Further translation: NOT SCIENTIFIC. <sup>iv</sup>

The manual has language making it clear the diagnosis of malingering should never be made on the TOMMS test alone and one should not conclude that exaggeration of symptoms is due to the law suit. Finally, the manual admits the diagnosis of malingering is of limited utility in the first place.

Also, malingering is not an all or none phenomena. Malingering does not exclude the possibility that a bona fide symptom might exist. Finally, the very reason we all file motions in Limine for the M word- "the diagnosis of malingering is one of them most pejorative clinical judgments because, in essence, it accuses the individual of willful deceit, fraud, and perjury." <sup>v</sup>

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i “Symptom Validity assessment: Practices issues and medical necessity” NAN Policy & Planning Committee , By Shane Bush, Ronald Ruff, Alexander Troster, Jerffrey Barth, Sandra Koffler, Neil Pliskin, Cecil Teynolds, Cheryl Silver, Archives of Clinical Neuropsychology, Vol. 20, 2005, pp 419-426.

ii Preston W. Tombaugh, TOMMS Manual (1996).

iii See Otfried Spreen & et al. at 677.

iv Preston W. Tombaugh, TOMMS Manual 16 (1996).

v Id. at 21