Characteristics of Compensable Disability Patients Who Choose to Litigate

Richard I. Lanyon, PhD, and Eugene R. Almer, MD

This study tested the hypothesis that personal characteristics, when profiled by performance on MMPI-2 scales related to attention-seeking behavior through somatization, would differ between compensable personal injury claimants who choose to go to litigation and those who choose not to litigate. The authors examined the MMPI-2 profiles and other file data, including type and severity of injury, on 96 patients who litigated and 46 who chose not to litigate. The profiles of the two groups differed significantly overall. The difference was accounted for by the litigating patients' significantly higher scores on the hypochondriasis (Hs), depression (D), and hysteria (Hy) scales. The Hs and Hy differences held up separately in claimants with physical injuries and in claimants whose injuries were psychological only. The differences also persisted after severity of injury was held constant. The profiles of the two groups did not differ in either defensiveness or exaggeration (i.e., on the validity scales L, F, and K). At least some of the differences in reported impairments between patients in general and personal injury claimants appear to be related to whether the patients choose to litigate, and the choice to litigate could be a function of personality-related, rather than situational, factors. A more definitive test of this hypothesis would require the availability of preinjury personality data.

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The effect of the availability of financial compensation on the severity of reported disability after injury has long been of interest to psychologists. Studies have generally supported the common belief that the potential availability of compensation is associated with greater persistence and/or severity of self-reported impairments.[1–3] Much of the empirical literature on this question has reported studies involving the MMPI or MMPI-2. The literature summarized by Butcher and Miller[1] plus their own data show that personal injury claimants tend to have high scores on the somatizing scales 1 (Hs, hypochondriasis) and 3 (Hy, hysteria), and also on scale 2 (D, depression). In another study, Lees-Haley[4] reported that the most common MMPI-2 profile in a sample of 492 plaintiffs in personal injury cases was a 13/31 high-point pattern. Somewhat similar findings have been reported in patients with head injury.[5–7]

Dr. Lanyon is Professor, Department of Psychology, Arizona State University, Tempe, AZ. Dr. Almer is Medical Director, Scottsdale Psychiatric Services, Scottsdale, AZ. Address correspondence to: Richard I. Lanyon, PhD, Department of Psychology, Arizona State University, Tempe, AZ 85287-1104. E-mail: RLanyon@asu.edu

Comparison of these profiles with data on medical patients in general[8] shows that on average, the profiles are more extreme than those of general medical patients. Thus, the findings cannot be accounted for by medical status alone. However, because most of the studies did not fully specify the nature of the control groups that were used (or did not use control groups at all), the reasons for the observed patterns remain unclear.

Several hypotheses have been offered to account for these observed characteristics of patients who are in a compensation-related situation. The most common hypothesis is a situational one. The concept of compensation neurosis, reviewed by Mendelson,[9] suggests that patients exaggerate their complaints during the litigation process and tend to be "cured" once the case is settled. Mendelson's data indicated that that was not always the case, however. A situational explanation was also offered by Lees-Haley,[10] who suggested the possibility of a litigation response syndrome, "a stress response which is associated with the process of litigation" (Ref. 10, p 3), with symptoms that resemble "those complaints that tend to be

identified as damages in personal injury and workers' compensation claims" (Ref. 10, p 3).

The possibility that compensable disability patients deliberately exaggerate their complaints has led a number of researchers to stress the need for a careful examination of profile validity in such assessments. For example, Butcher and Miller[1] discussed the different patterns of MMPI-2 validity scales that would signify a valid self-presentation, exaggeration of symptoms, or an extremely virtuous self-presentation. Lees-Haley *et al.* [11] developed a scale for the MMPI-2 for the specific assessment of malingering in personal injury cases. Dush *et al.*[12] showed that litigating and nonlitigating patients with chronic pain differed in their endorsements of "obvious" versus "subtle" items on the MMPI-2.

A second hypothesis involves the possibility that patients who engage in a compensation-related process are more severely injured than those who do not. Although this hypothesis is intuitively plausible, no directly relevant research could be found by the present authors or by Butcher and Miller.[1] However, in a study investigating the relationship between MMPI-2 scores and severity of closed-head injury, Hoffman *et al.*[6] reported that of their 57 patients with moderate or severe injury, 13 (23%) were involved in litigation, whereas 37 (55%) of the 55 patients with mild injury were involved in litigation. In a similar study by Youngjohn *et al.*,[7] 18 of the 30 patients with moderate to severe head injury were in litigation, whereas all 30 of the patients with mild head injury were in litigation. Although the data in each case were incidental to the purpose of the study, they contradict the intuitive hypothesis that more severely injured patients would be likely to engage in litigation.

A third hypothesis, based on the present authors' subjective experience, is that patients who choose to litigate differ in stable, personality-related ways from patients who choose not to litigate. It has appeared to the authors over a period of years that compensable patients who were involved in litigation tended to be more actively complaining and demanding than those who did not. In addition, the litigants seemed to be more dramatic and histrionic, insistent on "saying their piece" and eager to have their day in court. These characteristics are consistent with the MMPI-2 scale elevations on the Hs and Hy scales that have been documented in summaries of the empirical literature.[13,14]

Relation of the various hypotheses to the existing literature is hampered by ambiguity in the definition of subject groups. Specifically, two different concepts have often been used interchangeably: the potential availability of compensation and involvement in litigation related to that compensation. Most of the studies that have had control groups have compared patients who were involved in litigation with patients who were not in the forensic process at all. The relevant comparison that determines the relationship of patients' characteristics to participation in litigation would be between patients for whom litigation for compensation is possible and who litigate and patients who, when given the opportunity, choose not to litigate.

The present study compared the latter two groups: compensable patients who litigate and compensable patients who choose not to litigate. It was hypothesized that the previously reported findings (differences in scores on Hs and Hy and possibly on D) would be found when comparing patients who choose to litigate and patients who are in a litigation-related situation but who choose not to litigate. Such findings would indicate that previously reported patterns of differences between those who choose litigation and nonforensic patients are (at least in part) directly related to choice to litigate as opposed to the presence or absence of a forensic context in general.

Methods

The subject pool consisted of 142 patients with disability claims. The study was exempt from review under the rules of the Arizona State University Institutional Review Board, and no patient consent was required. These claims involved civil suits (44%), government employee claims (34%), or workers' compensation (22%). All had undergone formal psychiatric examination by the second author between 1994 and 1997 to determine the presence and extent of psychiatric or psychological difficulties and their relation to any currently claimed disability. There were 77 men and 65 women (mean age, 42 years; range, 20–64) and a mean education level of 13 years (range, 6–20). Scores on the MMPI-2 validity scales and basic clinical scales were available for all subjects.

Patients were placed in the litigation category if they had retained a lawyer at the time of the examination or if they clearly indicated that they were going to do so. They were placed in the nonlitigation

Table 1 Comparison of Demographic Characteristics of Litigating and Nonlitigating Groups*

Demographic Characteristics	Litigation	Nonlitigation
Age	41.8 ± 10.4	42.1 ± 9.7
Education	13.7 ± 2.4	13.2 ± 1.8
Gender, *n*(M/F)	54/42	23/23

* Age and education data are expressed as the mean ± SD. All $p > .10$.

category if they had not retained a lawyer and did not intend to. Determination of litigation versus nonlitigation status was made by the second author by examining the relevant entries in each case file two to four years after the evaluation had been completed, without reference to the psychological test data. In addition, two research assistants rated the case files on a total of 30 variables, including whether the complaint involved a physical injury and, on a four-point scale, the severity of physical damage sustained.

Results

Reliability

The consistency of classifying subjects in litigating or nonlitigating groups by the second author was assessed as follows. The second author classified 132 of the cases two to three years after the evaluation had been completed. One year later, he classified the remaining 10 cases plus 20 of the original cases, without awareness that the evaluations were being repeated. Agreement in the repeated assessments was 100 percent.

The reliabilities of the classification and rating tasks performed by the research assistants were assessed after initial training and discussion with the authors. More than 20 cases were examined independently by each research assistant. Their agreement in assessing whether the complaint involved a physical injury was 95 percent (19 of 20 cases). The correlation between their four-point scale ratings for extent of physical damage was 0.87. These results were considered satisfactory, and the remainder of the assignments on these variables were made by one of the research assistants.

Demographic Characteristics

Age, education, and gender characteristics of the subjects are shown in Table 1 separately for litigating and nonlitigating subjects. For age and education, means were compared; for gender, proportions were compared. Two-tailed *t* tests were used for this analysis and throughout the study. None of the differences between litigating and nonlitigating subjects reached significance at $p \leq .10$.

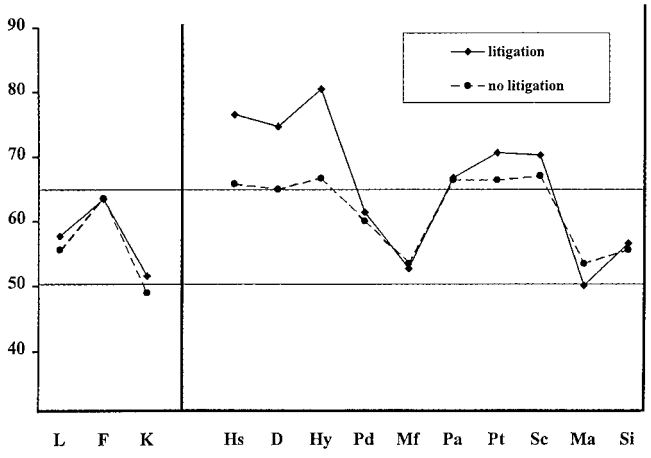

Figure 1. MMPI-2 K-corrected mean scores on each scale for litigating and nonlitigating subjects.

MMPI-2 Comparisons

MMPI-2 K-corrected mean scores on all scales for litigating and nonlitigating subjects are presented in Figure 1 and Table 2. The profiles were compared with a multivariate analysis of variance that included as dependent variables the nine clinical scales, scale 0 (Si, social introversion), and the three validity scales L, F, and K. The profiles were found to differ significantly, as hypothesized ($F = 2.56$, $df = 13,128$, $p < .01$). Results of individual *t*-tests, also reported in Table 2, showed significant differences on the Hs scale ($t = 4.21$, $p < .001$), the Hy scale ($t = 4.70$, $p < .001$), and the D scale ($t = 2.67$, $p < .01$). No other differences reached significance at $p \leq .05$. We noted specifically that none of the differences on the

Table 2 MMPI-2 K-Corrected Mean Scale Scores in Litigating and Nonlitigating Groups

MMPI-2 Scale	Litigation ($n = 96$)	Nonlitigation ($n = 46$)
L	57.7	55.6
F	63.4	63.5
K	51.6	49.1
Hs	76.5	65.7†
D	74.6	64.9*
Hy	80.4	66.6†
Pd	61.4	60.0
Mf	52.7	53.4
Pa	66.7	66.3
Pt	70.6	66.3
Sc	70.2	66.9
Ma	50.1	53.4
Si	56.6	55.6

* $p < .01$; † $p < .001$.

Table 3 MMPI-2 Scores for Hs, D, and Hy Scales for Litigating and Nonlitigating Groups in Physical Injury and Psychological Injury Only Groups

	Physical Injury (n = 65)		Psychological Injury Only (n = 77)	
MMPI-2 Scale	Litigation (n = 52)	Nonlitigation (n = 13)	Litigation (n = 44)	Nonlitigation (n = 33)
Hs	79.6	71.0*	70.5	63.1*
D	75.0	65.0	74.0	64.9
Hy	83.1	73.8*	75.7	63.9†

* $p < .05$; † $p < .01$.

validity scales L (t = 1.13), F (t =.10), and K (t =.98) reached significance.

Because patients with physical injury could be viewed as different from patients with psychological or psychiatric injury only, MMPI-2 individual scale comparisons were repeated in those patients with physical injury (litigation, n = 51; nonlitigation, n = 13). MMPI-2 scores for these groups are presented in Table 3. The groups differed significantly on both the Hs scale (t = 2.30, $p < .05$) and the Hy scale (t = 2.00, $p < .05$), but not on any other scale. Table 3 also shows the same comparisons for the patients reporting psychological injury only (litigation, n = 45; nonlitigation, n = 33). Again, these groups differed significantly on the Hs scale (t = 2.16, $p < .05$) and the Hy scale (t = 2.98, $p < .01$), but not on any other scale.

The possibility exists that litigation or nonlitigation status and scores on Hs, D, and Hy were related to severity of injury, which could be responsible for the relationship between them. To test this hypothesis, the comparison between litigating and nonlitigating subjects was repeated for each of these three scales, with rated severity of physical injury used as a covariate. Significant differences continued to be present between litigating and nonlitigating subjects for Hs (F = 10.88, df = 1,139, $p < .001$), D (F = 2.66, df = 1,139, $p < .05$), and Hy (F = 13.66, df = 1,139, $p < .001$). These analyses were then repeated only on data of subjects with physical injury, with similar results.

Discussion

The results can be summarized as follows. Claimants with compensable personal injury who chose to litigate scored significantly higher on the Hs, D, and Hy scales of the MMPI-2 than did those who chose not to litigate. No other scale produced significantly different scores, including the validity scales L, F, and K. The findings for Hs and Hy held up separately in claimants whose injuries were psychological only and also in patients with physical injury, despite the small number of litigating patients in this category. They also persisted after the possible contribution of severity of injury was taken into account.

A question can be raised about the adequacy of the method used to assess the reliability of the second author in making the litigation versus nonlitigation assignment—specifically, whether he might not have been completely "blind," despite the fact that two or more years had elapsed and he had performed many other evaluations during that period. In discussing this matter, it must be noted that one or the other of the two research assistants had also made litigation versus nonlitigation ratings for many of the subjects, but these ratings had been put aside because the research assistants had not thought that they had been able to perform the task reliably enough. *Post hoc* discussion of their ratings revealed that they had avoided rating a case as "litigated" unless they were absolutely positive beyond all doubt. Comparison of their ratings with those of the second author confirmed that this was the major source of disagreement between the two sets of ratings. Therefore, litigating (n = 47) and nonlitigating subjects (n = 46) were assembled for which both sets of ratings were available and in agreement, and the major comparisons were repeated in these two groups. Once again, litigating subjects scored higher on the Hs scale (t = 3.22, $p < .01$) and the Hy scale (t = 3.30, p = .001) and showed a trend on the D scale (t = 1.95, $p <$ .10). This analysis was repeated with severity of physical injury used as a covariate. Differences on Hs and Hy continued to show significance (both $p < .01$), with a trend on D ($p < .10$).

The results support the hypothesis that a significant part of the documented differences in self-reported impairment between personal injury claimants and patients in general can be accounted for by whether the claimants choose to undertake litigation. Whether comparable differences exist between patients in general and compensable patients who choose not to litigate is not directly addressed in the present study. However, subjective examination of the mean scores on Hs and Hy for nonlitigating patients, particularly in the physical injury group, indicated that the scores were considerably higher than those reported for medical patients in general (e.g., Swenson *et al.*[8]). Thus, it is possible that compensability alone is also a contributing factor to the elevated scores on Hs and Hy.

It is of interest that scales 6 (Pa), 7 (Pt), and 8 (Sc) showed the only other significant elevations (above $t = 65$), and that scores of both litigating and nonlitigating patients showed these elevations. Similar high scores have been reported in previous studies of disability patients.[1,6,7] A conservative interpretation would be to regard them as reflecting the anxiety, subjective distress, and thought confusion that may accompany the experience of a significant injury, plus the life disruption and uncertainty that it can produce.

The data can be used to address the several hypotheses regarding the reasons for the previously reported differences on the Hs, D, and Hy scales. The fact that the present study found no differences between litigating and nonlitigating patients on the response-distortion scales L, F, and K indicates that the present differences on the Hs, D, and Hy scales were not due to conscious or unconscious response distortion. Also, it might be expected that any temporary condition such as described by Lees-Haley[10] would be reflected to some extent in the validity scales—particularly in the F scale, which reflects overall level of psychopathology. Thus, there was no evidence that situational factors were responsible for the present differences. Further, the present findings showed that although the magnitude of the differences on Hs, D, and Hy diminished slightly when severity of injury was controlled, the differences nevertheless remained significant.

The data therefore suggest that the observed differences on Hs, D, and Hy represent, at least in part, stable personality differences between the two groups. In other words, personal injury claimants who choose to go to litigation are different in stable ways from those who decide not to litigate even though they have the opportunity to do so. The question might be raised as to whether the differences represent somatization—in other words, that it is those who somatize who choose to litigate. However, because the differences were present not just in patients with physical injury but also in persons claiming psychological injuries only, it is likely that the basis for the differences is broader than simple somatization.

To summarize, the present study controlled for setting, by holding constant the fact of compensability. Under those circumstances, the MMPI-2 differences previously reported between compensable and noncompensable patients continued to be present between litigating and compensable but nonlitigating patients. The findings are consistent with the authors' observation that litigants appear to differ from nonlitigants in their need to draw attention to and dramatize their complaints. The decision of whether to litigate could also be related to other factors, such as knowledge of the legal system and/or personal rights and differences in patients' personal experiences of the trauma. It could also be that any preinjury personality differences are in factors not directly assessed by the MMPI-2—for example, assertiveness. A more direct test of the personality hypothesis would require a prospective study, involving comparisons based on psychological tests or similar data collected prior to any injury.

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