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APPROPRIATE TESTS AND EVIDENCE FOR ALCOHOL MISUSE IN FAMILY COURT CASES

Anyone who works in the family court system will have realised that there has been a dramatic reduction in input expert psychiatric witnesses over the last few years. The motivation for this is partly financial but also because judges now have more scope to manage cases and, in their wisdom, have felt that much of what had been written about alcohol misuse is known to them and does not require expert input. And of course they are quite right – in general.

Nature, though, as we all know, abhors a vacuum, and unfortunately I have noticed a trend emerging which I find rather worrying as a doctor. This is for lawyers, of varying ilks, to confidently recommend or order Liver Function Tests on the (wholly false) assumption that they are a reasonable way of evidencing whether someone is or is not using alcohol. Indeed, so widespread has this practice become that I fear it has taken on the characteristic of a shared delusion within the legal system.

So, in this article I would like to give some context to the use of tests and consider how addiction (and indeed other) psychiatrists assess evidence in clinical and medico-legal practice and the role tests of any sort have to play in this.

History

Any medical student will be able to tell you that a consultation begins with a 'history'. This, in medical jargon, refers to the account the patient or client gives you of the subject under scrutiny. Mostly the taking of a history involves a structured interview and in the case of alcohol one starts from the earliest use and (as in any other medical history) supplements the patient's account with direct questioning (this sometimes appears in notes as TDQ [to direct questioning]).

It may be surprising to lawyers how often this yields rich pickings. Firstly many people are quite open and honest about their alcohol use over the years and secondly, by asking very basic but focussed questions, one can build up a very clear picture of someone's drinking pattern. Rather than asking vague questions about patterns of use, one can ask the patient how much they drank that day, the day before and so on. People will also quite often be honest about 'blackouts' not realising that alcohol misuse is the likely cause. One can then get them to think about the situations in which they drink, the triggers and stressors which prompt it and whether they have problems controlling the amount they drink etc.

The next rich source of information is informants. In clinical practice, spouses and partners are often best place to report on this, but in medico-legal cases one is often reliant on written accounts, but these are still important in building up a (medical) case. I have to admit it can be frustrating explaining this to courts, especially when it is evident that the judge has turned their face from the possibility. I once was involved in a case where this happened. My attempts to explain the convincing nature of the wife's account of her husband's drinking (more so because she clearly did not have the wit to dissimulate convincingly) were rejected and the report of the psychologist in the case was actually redacted to remove all mention of alcohol!

Examination

Psychiatrists are doctors and can perform two sorts of examination. The first, the mental state examination, in conducted in parallel to the interview and is unique to the discipline (although it is always open to GPs etc. to indulge). The main findings which might support a diagnosis of alcohol misuse might include the obvious signs of alcohol intoxication at interview – unsteadiness slurred speech etc. Cognitive problems in the sober may also be related to long term alcohol abuse as may evidence of confabulation (making things up) to cover gaps in memory caused by blackouts etc. This is a sign of Korsakoff's 'psychosis' (not actually a psychosis – but an old name describing the symptoms in one half of what is, nowadays, linked to Wernicke's encephalopathy (see below)).

Psychiatrists rarely examine patients 'on the couch', though if we did so more often we may well find signs of enlarged livers where they had not otherwise been noted. However mild jaundice is sometimes visible in the eyes, if not on the skin as are other markers of excessive alcohol use such as spider naevi (red spider-like markings caused by aberrant blood vessels) and Dupuytren's contracture (bands of shortened connective tissue which prevent people from fully extending one or more fingers). Huge 'health warning' here – heavy alcohol use is only one of many different causes – lawyers beware! Lastly, in severe cases, one can see nystagmus (jerky sideways eye movements when following an object) and clouding of consciousness – signs of Wernicke's encephalopathy (brain disease caused by severe alcohol use).

Medical notes

Unless they simply do not exist, I will not even send an appointment in a family case until such time as I have a full set of GP medical notes and have been through them with a fine tooth comb. Whilst some notes are clearly disappointing, most yield at least some useful information and in one memorable case the documentation of alcohol abuse combined with serial blood tests (of which more below) was instrumental in persuading the client, who up until then was in complete denial, to 'pull her finger out' and do something about her problem.

The first part of the medical notes to peruse is the history or notes section. Quite often these will show multiple entries for problems associated with alcohol, attempts to reduce, recordings of units consumed and referrals to addiction services. Additionally there are often entries for problems which commonly occur secondarily to alcohol misuse, such as upper abdominal pain and its treatment, together, perhaps, with referrals to gastroenterology and the like. Pancreatitis (the commonest cause of which is alcohol overuse) and cirrhosis often feature. Often antidepressants are prescribed with limited evidence of anything other than heavy alcohol use – alcohol is one of the strongest depressants known to medicine.

The next section (which is sometimes unhelpfully significantly reduced by the GP rationalisation process) is letters from hospitals. Anyone who has ever sat around in Casualty on a Saturday night will realise that one often finds multiple attendances at A & E for fractures, assaults and other mishaps which occur when people are drunk. I pay especial attention to fractures of fifth metacarpals (the joint of the little finger) – almost always sustained through punching – and often associated with the aggression associated with heavy alcohol use.

The next section to look at is the lists of medication churned out by GPs' computer system. This is a useful check where GPs do not always write much in the notes. I find that long term prescriptions of Omeprazole (or its cousins ending in the same two syllables) are often associated with other markers of alcohol misuse.

Lastly there are blood results. Some GPs (bless 'em) are serial bloodletters and repeated abnormal readings, as in the case referred to above, are incredibly helpful in building up an overall picture of problems. I will deal with these below.

Blood Tests

Blood tests can feature in both clinical and medico-legal practice, but, as should be obvious from my introduction, are to be used with extreme caution and, I would argue, only 'under medical supervision'. Much like the X-Ray, much beloved of A & E attenders, they are only as good as their interpretation. Indeed it is a basic maxim in medicine that you should not order a test other than to confirm a pre-existing clinical diagnosis (made by history and examination).

Let's start with Liver Function Tests (LFTs) as these are so controversial. A little background first. The liver metabolises many compounds including alcohol. Substances pass in through the blood and their metabolites flow out. This transformation is caused by enzymes. When things are going well – and the important point is that this can be the case for even relatively heavy drinkers for some while – the levels which 'spill out' into the bloodstream are quite moderate (within the normal range in other words). It is only when there is damage to the liver cells or other components that levels of certain enzymes rise.

The first hurdle is that, if a GP orders LFTs, many labs will not routinely include γGT (or GGT- gamma glutamyl transferase/ transpeptidase), the most sensitive marker associated with alcohol use. There may be imbalances in the aspartate aminotransferase (AST) to alanine aminotransferase (ALT) ratio in heavy alcohol use but this is not something which is easy to interpret – although it may prompt a check of γGT. Whilst a raised γGT is not proof of alcohol misuse (because there are other causes) it certainly is very strong corroborating evidence. And, indeed, if it has been raised, a serially reducing level over time can support the conclusion that the person is at least reducing their alcohol consumption. However a normal γGT can never be used to show, in isolation, that a person is not drinking heavily. Furthermore binge drinkers often do not show positive results as their liver has time to recover from repeated 'insults'.

An often overlooked test, which is often found routinely in patients' notes as part of a 'full blood count' (fbc) is the MCV (mean cell volume – of red blood cells). A raised MCV – particularly if seen serially over time – can support the conclusion that someone is drinking heavily – though it can never be diagnostic alone as there are other causes of enlarged red blood cells.

Possibly the most useful relatively specific blood test is Carbohydrate-deficient transferrin (CDT) which elevated in recent heavy alcohol use but raised levels can also be found in a number of medical conditions. This test is always best accompanied by a witness statement from one of the companies who provide the testing to contextualise its significance.

Hair Strand Tests

Hair strand tests are expensive and therefore sometimes avoided. Two chemical are tested for: EtG (ethyl glucuronide) and FAEE (fatty acid ethyl esters). Both should be tested for and should always be accompanied by a witness statement from the

company doing the testing. This will contextualise and delineate the limitations of the accuracy of the results as well as reminding the court of the limitations of the testing; both if only one is positive and also concerning the concurrent use of hair products. Mr Justice Moylan has provided guidance in **London Borough of Richmond upon Thames v B** [2010] EWCA 2903 (Fam) but it is important to distinguish between the expertise of the lab expert and that of the psychiatrist who interprets them.

Most psychiatrists will only be familiar with their use in a medico-legal context – they are not in common use in clinical practice. One of the most important factors, easily missed without either a witness statement or expert input, is that one has to be drinking at least 6 units a day regularly before they will show positive. This equates to nearly 3 times the recommended maximum for men and four times that for women. Binge drinkers can quite often show negative results on this test because of the need for regular intake and the minimum average consumption required to show a positive result.

I once saw the limited understanding of this test play out to devastating effect where a husband in private law family proceedings had got his own hair tested (presumably without benefit of a witness statement) and had convinced the judge that his positive result was 'at a low level'. The judge ruled that the wife was lying when she said that her husband was an alcoholic and sent her off to me for an 'explanation'. This woman gave me a clear description of her husband's descent in alcoholism and I had to try and explain to the judge why she (the judge) was wrong – not an enviable task for an expert!

Other Tests

Most lawyers will be aware that breathalysers only record the alcohol level at the time and so are good for repeated testing, perhaps in the context of visits to contact centres or alcohol treatment centres. Urine testing, fulfils a similar function, as does blood testing – mostly seen in a criminal context. And many lawyers, particularly with a background in criminal law, will also know that alcohol is metabolised at a rate of approximately one unit an hour. For all these reasons, such tests have a limited application in family cases.

Conclusion

Few things in life are simple and attempts to cut corners are likely to lead to red faces sooner or later. In my experience, left to their own devices, courts can get over-enthusiastic about measuring the degree of alcohol (and drug) abuse and often seek simplistic solutions: 'So how long does a person need to remain dry before one can say they are cured?'. In reality alcohol abuse is rarely found alone, the same issues which lie behind it (almost invariably some form of childhood abuse or neglect) also cause other conditions – most frequently Borderline and other Personality Disorders.

I am all for the court managing cases more tightly and I am cognisant of the fact that, in the past, experts were drafted in at the drop of a wig, but let us guard against the pendulum swinging too far in the opposite direction. Experts can help – don't always assume you can do without us.

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