# Borderline Personality Disorder and Related Traits in Forensic Psychiatry

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**Persons with borderline personality disorder (BPD) and related traits appear in many forensic psychiatry settings. Their clinical hallmarks affecting judgment, insight, impulsivity, motivations, and regulation of emotions, as well as their frequently chaotic lives (internal and external), inaccurate perceptions, rationalizations, and comorbid syndromes can have a marked effect on many civil, criminal, and institutional (e.g., corrections) issues. Individuals with BPD are overrepresented in civil, criminal, and child custody forensic situations. The character psychopathology of these individuals is substantial, but is often not obvious to laypersons, including lawyers, judges, and jurors. The presence of BPD rarely affects basic responsibility for the person's actions, nor does it usually compromise most forms of competency. Function, not diagnosis, is the key arbiter of forensic relevance. BPD is associated with an increase in the likelihood of doctor-patient problems, including patient complaints and lawsuits that may not be deserved. Forensic professionals evaluating persons with BPD and related traits should be aware of personal and professional bias, particularly that associated with true countertransference.** *(Journal of Psychiatric Practice* **2009;15:216–220**)

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Forensic work can involve borderline personality disorder (BPD) and its traits in many different ways. When discussing forensically relevant topics, one may refer to a broader population of people with significant borderline traits and "Cluster B" characteristics, not just those who meet DSM-IV-TR criteria for the personality disorder. Most of the comments in this column are applicable to people with substantial traits, whether or not they qualify for the personality disorder diagnosis, and generally (but not exclusively) refer to women. For purposes of simplicity, and understanding that the word is sometimes used in a cavalier fashion, this article will use the term "borderline" in a clinical (not a slang) sense to refer to this broader group of people.

## CLINICAL HALLMARKS

The clinical hallmarks of impaired judgment, insight, impulse control, regulation of emotions, and motivation, as well as chaotic internal and external lives, inaccurate perceptions, possible psychotic periods, inappropriate rationalization, and comorbid disorders and syndromes can have a marked effect on civil, criminal, and institutional (e.g., corrections) issues. What follows is a brief overview of many of these effects rather than a comprehensive discussion.

## OVERREPRESENTATION IN FORENSIC SITUATIONS

Two things cause individuals with borderline pathology to be overrepresented in some civil and criminal forensic populations, and in correctional populations.[1,2] First, the clinical characteristics already mentioned lend themselves to problems with or for other people, in couples, families, social interactions, work environments, doctor-patient relationships, and institutional living situations. Those problems often become serious enough to warrant some legal action, or contribute to the individual's becoming involved with the law. Second, although their attitudes and behaviors are often pathological, individuals with borderline symptoms (not always "patients" in forensic matters) are usually healthy enough to be involved in the whole panoply of human experience—relationships, work, society—rather than being routinely sequestered or left out of it as a per-

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son with schizophrenia might be. Thus these individuals are exposed to all the areas of life in which forensic issues may arise and can, among other things, enter a forensic process by themselves (e.g., by complaining about a perceived wrong, seeking a lawyer to file a malpractice suit, or planning and executing a criminal act).

## COMPETENCY, RESPONSIBILITY, AND INTENT

### The Legal Arena in Criminal and Child Custody Matters

Many forensic situations involve a determination of whether or not someone is competent to do something or is responsible for his or her behavior. Forensic professionals know that, although the behavior of persons with borderline symptoms is often impulsive or disorganized, it is almost always "competent" for most legal purposes, and the person is accorded responsibility for it. With a few exceptions—and noting that function, not diagnosis, determines competency and responsibility—"borderline" behaviors are not so far from "reality" that the person lacks intent or fails to know what he or she is doing or whether or not it is "wrong" (in a legal or moral sense). Impulsivity and lack of emotional regulation may be obvious, but few criminal courts or juries exonerate people solely because of borderline characteristics or behavior.

Similarly, issues of legal competency are rarely affected by borderline symptoms or traits. People with those traits are almost always found competent to stand trial, enter into contracts, marry, authorize or refuse treatment, and do myriad other things. The most common exceptions arise when borderline symptoms and traits interfere with behaviors that require ongoing attention, objectivity, and/or empathy, such as parenting, and/or when severe borderline characteristics carry an unacceptable risk of harmful behaviors such as child neglect or abuse. Nevertheless, to continue with this specific example, when children must be removed from the home of an individual with borderline pathology, the action should be based on the parent's unacceptable and unmanageable behavior, not on the diagnosis *per se*.

*A person diagnosed with BPD was engaged in a custody battle for her small children. One day, her ex-husband returned the children after a visit, whereupon she immediately began to scream that he had harmed them. He left without further incident, but was soon served with an arrest warrant for assaulting her, beating her, and tearing her clothing, all in front of the children. One of the young children gave a statement that he "pushed Mommy and he hurt her." The charges were dismissed, however, when the mother's housekeeper, who came to the foyer after hearing her screaming, testified that after the father left the woman appeared unharmed, then tore her own clothing and bruised her own arm.*

*The police department (not the husband) filed criminal charges of false reporting. She insisted on a trial, at which her defense attorney called her treating psychologist as a witness on her behalf. The psychologist testified that the woman was not responsible for her false reporting and other behavior because she had been under great stress and feared she would lose custody of her children. Her BPD, the psychologist opined, caused her to react to that stress "in away [sic] that was logical in her confused mind even though she knew it was illegal." Nevertheless, a jury found her responsible, and she was convicted and placed on probation.*

### The Societal View

Most mental health professionals understand the deep pathology associated with BPD and severe borderline traits. Many of us recognize the frustration and pain our borderline patients experience, not being able to tolerate or enjoy mature relationships, and failing again and again to meet deep internal needs with ineffectual external objects and behaviors. How can we convey these genuine flaws and incapacities to those who make legal decisions, especially in criminal and family courts, in order to see that our patients get the special consideration they seem to need?

In my opinion, we shouldn't, at least not in any way that implies that symptomatic BPD should warrant exoneration or other extraordinary treatment by the law. "Society" seems to agree. Laws and social mores are primarily based on *behavior*, not symptoms or diagnoses. Society must do what it can to deal with behaviors that interfere with its smooth operation. One way is to establish some behaviors as "crimes"; another is to provide some humane way to

stop noncriminal aberrant behavior or to separate those who display such behavior from those who may be harmed (e.g., via civil commitment, which includes mitigating harm to the patient herself and trying to ameliorate the problem).

Society does not tolerate repeated insults to public sensibilities for very long. If a perpetrator is clearly unable to know what he or she is doing, for example, or to participate in trial proceedings, a "psychiatric" solution may be found (such as finding the person not guilty by reason of insanity). On the other hand, jurors and other citizens are rarely interested in exonerating or exempting those who have caused pain or loss to others but who appear "normal" in most respects. Individuals with borderline traits or symptoms usually don't look or behave truly incapacitated to the public, even when a psychiatrist or psychologist sees obvious internal disruption.

In addition, it is my experience that most impulsive, emotionally volatile people (and many who are psychotic) adhere to laws and social norms when society expects them to do so. Both habit and expectation of consequences contribute greatly to stopping at red lights, refraining from stealing, and avoiding violence, even in people whose psychiatric symptoms are substantial. As a matter of social policy, it would be unfair to victims, perpetrators, and the rest of us to stop holding people to a standard of good and lawful behavior, or for the legal system to expect something less of persons solely because they exhibit psychiatric symptoms (when their psychiatric *function* doesn't preclude responsible behavior).

## CIVIL LITIGATION AND LAWSUITS

First, people with BPD can be wronged, and can deserve compensation or other consideration just as any other person when compensation is supported by the facts of a case. It is unreasonable simply to assume that a person's symptoms, allegations, or explanations are automatically suspect just because a clinician has found borderline characteristics, even if those characteristics appear in a forensic context.

*A woman with clear symptoms of borderline personality disorder was seen by a psychiatrist who became enthralled by the attention she appeared to give him during clinical appointments. He had documented her various symptoms and behaviors well, including sexual ones, and one day invited her to a social occasion. He allowed the relationship to proceed further and, after the relationship soured, she sued the psychiatrist for his inappropriate social and sexual behavior. The doctor attempted to cite her seductive behavior to mitigate his responsibility and, through his attorney, pointed out a number of exaggerations and inconsistencies in her testimony (attempting to use her borderline characteristics to impeach her credibility). The relevant facts were clear, however; the psychiatrist lost the case and his medical license was suspended.*

On the other hand,

*A woman with severe borderline traits and a history of childhood sexual abuse visited a psychotherapist whom she knew to have a reputation for sexual activity with his patients. Her purpose, in retrospect, was to seduce him into a sexual situation and then sue him. She surreptitiously recorded several sessions in which she spoke and behaved seductively but the therapist did not appear to respond inappropriately. One day, he finally returned her rather open flirtations with what appeared to be tentative, but clear, innuendo of his own. Soon after that session, she called a lawyer, who met with her to discuss her prediction of impending sexual behavior by the therapist. She offered to return to the therapist to gather more recorded evidence. The lawyer, who was the second she had consulted, quickly realized that the woman's own behavior and personality characteristics significantly compromised any potential lawsuit and, after speaking with a forensic psychiatrist, declined the case.*

### Malpractice Allegations

Physicians and other clinicians are at least partially justified in their frequently held view that borderline patients are difficult to treat, and that caring for them can lead to a disproportionate number of complaints and lawsuits. This is a population who, whatever else may prompt a clinical visit, come to the office with an increased potential for problems in treatment, unreasonable expectations, poor clinical outcome, and difficulty in the clinician-patient relationship. Many potential problems are founded in volatile transferences, which are fertile ground for

misperceptions and primitive responses related to anger, perceived abandonment or betrayal, and a host of other feelings.

Lawsuits happen for some (combination of) *purposes*, which may be reasonable or unreasonable, obvious or very subtle. When a patient is prone to unreasonable feelings and perceptions associated with relationships, including doctor-patient relationships, the probability of a lawsuit (or some other action, such as malicious gossip, a licensing board complaint, or a threat) increases. A lawsuit or other response that is factually unreasonable, and often out of proportion to whatever error may or may not actually have occurred in the treatment, may be psychologically explainable and/or factually frivolous, but it's still a lawsuit and a burden, regardless of the eventual outcome.

**Pseudo-rationality**

Lawyers (particularly inexperienced ones), friends, and jurors routinely view persons with borderline pathology as essentially "normal"; most of these individuals don't look very disturbed. Non-mental-health-professionals may notice eccentricities, but everyone has eccentricities. Borderline patients are often accomplished and well-educated. They usually have jobs, interact with people, and may be lots of fun in superficial social settings. Many have a superficial sexuality that makes them popular temporary partners, even when deeper relationships are problematic. Their willingness to speak out or do things others eschew because of social inhibition makes them exciting for some, and envied by others. Statements, affidavits, and testimony from such people are often coherent and convincing, even when the facts of the matter indicate otherwise. When cross-examined, they may have rational-sounding explanations for what seem to be unusual, even outrageous stories. "Pseudo-logical" explanations can distract an evaluator or trier (judge, jury) from inappropriate behavior, as illustrated in the following example.

*A woman driving slowly in a construction zone was hit from behind by another car at roughly 5 miles per hour. She and her small child, in appropriate safety belts and with the child in an infant seat, acted normally after the bump. She got out of the car, looked briefly at the bumper, exchanged contact information with the other driver, and hurriedly left for a pre-existing appointment with her massage therapist. She later sued the other driver and her insurance company for enormous damages, alleging great pain and suffering (in her, not her child) which incapacitated her and necessitated dozens of doctor visits and appointments with massage therapists, aroma therapists, and a "*chakra *balancer."*

*When asked at trial how she justified her normal-appearing behavior just after the accident and her apparently nonchalant keeping of her massage therapy appointment, she said, very convincingly and in a way that implied she expected the jury to believe her, "I was in shock. I didn't realize how much I was hurt… I had to get to my masseuse as soon as possible to be sure I wasn't hurt, and to keep us from developing even worse injuries" (both she and the child had massages).*

*The jury found the other driver liable for the rear-end accident, but awarded damages of only a few dollars.*

## COMPLICATION OF COMORBID DISORDERS BY BPD

BPD and related traits often complicate Axis I disorders and other syndromes in a way that can have forensic consequences, making them more symptomatic, more difficult to treat or manage, and more prone to become matters of forensic interest. For example, substance abuse or dependence, impulse control disorders, stalking, and some forms of factitious disorder may be associated with criminal behavior. Borderline traits make other impulse control disorders, posttraumatic stress disorder, somatoform disorders, dissociative disorders, pain disorders, and some mood and anxiety disorders harder to treat and more likely to end in patient dissatisfaction, poor outcome, or litigation. In particular, suicide risk and suicidal behaviors are much more difficult to manage in borderline patients than in those with relatively uncomplicated Axis I disorders, which can lead to tragedy and subsequent lawsuits.

## FORENSIC EVALUATION

When one examines an evaluee with borderline personality disorder or borderline personality traits, one should be aware of the many aspects of his or her

personality that create special nuances of defense, transference, and countertransference. Most of these issues are familiar to experienced clinicians, but they can be especially influential when evaluating individuals with borderline pathology.

Review the history carefully and completely before seeing the evaluee. Use independently corroborated history to guide, and sometimes challenge, the content and process of the interview(s). Consider recording the examination in some way. Be aware that borderline evaluees, more than most others, may inappropriately experience the forensic or administrative examination as a treatment session, or may create some other unwarranted attachment or expectation (such as a treatment expectation or perception of support). Evaluators should be particularly aware of their biases for and against "borderline" evaluees, and guard against being either pejorative or overly solicitous during the examination, when composing reports, and when testifying.

## References

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