

The Fake Bad Scale: Malingering or Litigation Response Syndrome -- Which is It?

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Abstract

This report examines the similarity of items on the MMPI-2 and MMPI-2-RF versions of the Lees-Haley et al. (1991) Symptom Validity (formerly Fake Bad) Scale (FBS; FBS-r) with emotional and somatic symptoms described in an earlier article by Lees-Haley as credible stress reactions to litigation involvement: the Litigation Response Syndrome (LRS; Lees-Haley, 1988). Substantial overlap was found between the FBS items and these earlier symptom descriptions, with a majority of the litigation-based stress items found on both the FBS and FBS-r. The probable impact of credible symptom reporting on FBS/FBS-r scores in personal injury litigation is discussed.

Introduction

The Fake Bad Scale (*FBS*; Lees-Haley, English, & Glenn, 1991) and its short form (*FBS-r*) are widely used to detect “faking bad,” “noncredible symptom reporting,” and “somatic malingering.” In this paper we provide evidence based on a little known but highly informative publication authored by Lees-Haley (1988) that, in fact, the *FBS* is highly sensitive to common psychological and emotional consequences of being involved as a personal injury claimant in the litigation process itself. More specifically, Lees-Haley’s (1988) Litigation Response Syndrome refers to a wide array of *credible* psychological and somatic symptoms that are a stress response to litigation involvement. Three years after publication of the Litigation Response Syndrome (*LRS*), the *FBS*, which was designed to detect malingering in personal injury litigation, comprised MMPI/MMPI-2 items that, in the majority of instances, appear to be direct embodiments of Lees-Haley’s Litigation Response Syndrome.

Following its publication in 1991, the *FBS* was relatively quick to draw research attention and commentary, gaining mention in at least 50 publications within 15 years. In January 2007, the University of Minnesota Press, the publisher of the MMPI-2, added the *FBS* to its official scoring program for the test, and this decision appears to have markedly accelerated the number of publications in which the *FBS* and *FBS-r* (the version included in the more recent MMPI-2-RF) figure, with more than 90 publications since that date. Surprisingly, none of these or earlier published studies examined the psychometric properties of the *FBS*’s item content.

Within the court system, the *FBS* has failed a number of challenges as to its scientific credibility and admissibility as evidence (Butcher, Gass, Cumella, Kally, & Williams, 2008; Gass, Williams, Cumella, Butcher, & Kally, 2010; Williams, Butcher, Gass, Cumella, & Kally, 2009). Plaintiff attorneys who have examined the item content of the *FBS* have recommended as a litigation strategy that the *FBS* should be allowed into evidence and then challenged before the jury or judge based on its obvious lack of face valid item content (Williams et al., 2009). In 2008, the Fake Bad Scale was renamed nominally (though not modified in its recommended clinical use) by the University of Minnesota Press to the more cosmetic Symptom Validity Scale. This name change

was precipitated by judicial opinion in the case of *Williams v. CSX Transportation, Inc.*, 2007, that the original name was “pejorative and derogatory and thus prejudicial.” In common clinical practice, the *FBS* continues to be used as a “fake bad scale.” Moreover, the *FBS/FBS-r* are now being used across a wide range of psychological assessment settings, including within the Department of Veterans Affairs, despite an absence of validation research that would ethically justify such applications (Gass & Odland, 2012, 2014; see APA Ethical Guidelines, 2013).

The *FBS* was developed on a sample of 45 personal injury litigants drawn from Lees-Haley’s private practice, of which he classified 12 males and 13 females averaging 38 years of age (range not reported) as malingerers, and 7 males and 13 females averaging 37 years of age as nonmalingers. On the basis of rational selection, 43 items were deemed to distinguish these two groups, and keyed in the direction of malingering. The criteria used for assigning litigants to the malingering vs. nonmalingering groups were not described, nor were the differential item endorsement frequencies between the two groups provided, omissions that prevent empirical replication, and the *FBS* has not been subsequently cross-validated. Additionally, as Butcher et al. (2008) point out, “Other than gender and mean age, no other demographic information, including preexisting conditions or disability status, was provided, nor were there descriptions of the participants’ injuries (either real or feigned), or their relevant medical and psychological histories. The types of patients referred to Lees-Haley, as well as the referral sources, were not described, so that we do not know how representative his convenience sample was relative to the general population of litigants in personal injury (p. 195).”

The *FBS* authors provided no information that may bear on the credible stress-related emotional and somatic effects of litigation itself on their sample of claimants. In fact, this omission characterizes virtually all of the research studies that purportedly support the validity of the *FBS* as a measure of non-credible symptom reporting. This includes the studies that were incorporated in published meta-analytic studies (e.g., Nelson, Hoelzle, Sweet, Arbisi, & Demakis, 2010; Nelson, Sweet, & Demakis, 2006). Readers who are impressed by meta-analysis should scrutinize its use with data compiled from inadequately controlled investigations, recognizing the fundamental principle of “garbage in, garbage out.” After a thorough review of the *FBS* literature, Butcher et al. (2008) concluded that the *FBS* would have been more aptly named the “Personal Injury Litigation Scale” because it best discriminates litigants from non-litigants without providing unambiguous evidence of malingering.

Scores on the *FBS* are interpreted as evidence of faking, malingering, and/or “non-credible symptom reporting,” yet scores on this scale are notably increased by brain injury (Greiffenstein et al., 2002), even to the extent of exceeding raw scores of 30 (Greve et al., 2006). Other bona fide physical health problems produce elevated scores on the *FBS* (Iverson et al., 2002; Meyers et al., 2002). In addition to these troublesome confounds and sources of artificial score inflation, *FBS* scores are significantly increased by the stress associated with plaintiff status in personal injury litigation (Butcher et al., 2008; Tsushima & Tsushima, 2001; Weissman, 1990). Clinicians who use the *FBS/FBS-r* in civil litigation cases must somehow control for the numerous credible symptomatic effects Lees-Haley (1988) described in his article on the Litigation Response Syndrome (*LRS*). As he described, *LRS* is “a stress response associated with the process of litigation.” *LRS* “is made up of complaints which arise solely from the experience of being personally involved in a lawsuit, rather than from the original event which precipitated the litigation” (p. 3). According to Lees-Haley, the constellation of *LRS* symptoms is wide-ranging, encompassing hysterical, hypochondriacal, and obsessive-compulsive symptoms, substance abuse, and paranoid ideation (see Cohen & Vesper, 2001; Strasburger, 1999; and Weissman, 1990, for similar descriptions of litigation stress). Among the *LRS* symptoms and complaints noted by the

author are many that correspond, in sense and wording, to specific MMPI-2 items that were included in the *FBS*. A listing of these items (in paraphrased form) and their expression in Lees-Haley (1988) are presented in Table 1.

Table 1

Paraphrased MMPI-2 FBS and FBS-r Items, and their Quoted Corresponding Litigation Response Syndrome (LRS) Symptoms and Complaints from Lees-Haley (1988).

MMPI-2/MMPI-2-RF Item #	LRS Symptom/Complaint
11/15 Lump in the throat (T)	“lump in the throat” (p. 5)
18/43 Attacks of nausea & vomiting (T)	“nausea” (p. 5)
28/76 Bothered by upset stomach (T)	“nausea” (p. 5)
30/79 Have nightmares (T)	“nightmares” (p. 5)
31/6 Hard to keep mind on task/job (T)	“disruptions of...concentration” (p. 5)
39/-- Sleep is fitful/disturbed (T)	“insomnia” (p. 5)
40/101 Head hurts all over (T)	“aches and pains” (p. 5)
44/-- Suddenly feel hot all over (T)	“hot flashes” (p. 5)
57/88 Rarely feel pain in back of neck (F)	“aches and pains” (p. 5)
59/210 Discomfort in pit of stomach (T)	“nausea” (p. 5)
111/230 Great deal of stomach trouble (T)	“nausea” (p. 5)
152/333 Don’t tire quickly (F)	“easy fatigability” (p. 5)
164/162 Rarely have dizzy spells (F)	“dizziness” (p. 5)
176/189 I’ve very few headaches (F)	“aches and pains” (p. 5)
224/265 Rarely have pains (F)	“aches and pains” (p. 5)
249/-- Eyesight is good as ever (F)	“blurred or distorted vision” (p. 6)
325/200 More trouble concentrating than others (T)	“disruptions of...concentration” (p. 5)
339/187 Can’t overcome difficulties piling up (T)	“feelings of hopelessness and pessimism” (p. 5)
464/247 Feel tired a lot (T)	“easy fatigability” (p. 5)
469/261 Feel I’m about to go to pieces (T)	“anxiety and alarm responses” (p. 5)
496/234 Not feeling much stress or pressure lately (F)	“the entire spectrum of mild to moderate stress responses (p. 5)
505/315 Sick of what I have to do, want to get out of it all (T)	“feelings of hopelessness and pessimism” (p. 5)
561/-- Have enough energy to work (F)	“easy fatigability” (p. 5)

These items, constituting 53% of those scored on *FBS* and 63% of those on *FBS-r*, are then, according to Lees-Haley (1988; Lees-Haley, et al., 1991), at least as plausible as indicative of *LRS* as of malingering.

Litigation Effects on Responding to FBS Virtue Items

The item content of the *FBS/FBS-r* is not only saturated with credible psychological and somatic symptoms of Litigation Response Syndrome, it also includes numerous items that constitute a “demand characteristic” associated with plaintiff status that is completely independent of malingering or faking bad (Gass & Odland, 2012, 2014). These items refer to a denial of occasional dishonesty and a denial that people are generally willing to be dishonest or to tell white lies in high-pressured situations. In a legal context, plaintiffs understand that their responses to MMPI-2/MMPI-2/RF items can be admitted into evidence to assail their credibility. This understanding applies equally to malingerers and non-malingerers. Not surprisingly, these two groups will share a desire to avoid self-incrimination. Yet, denials of self-incriminating behaviors and misanthropic attitudes on the MMPI-2/MMPI-2-RF contribute significantly to higher *FBS/FBS-r* scores (Gass & Odland, 2012, 2014). Given a context in which a plaintiff’s credibility is being challenged, the impact of these *FBS/FBS-r* items is very similar to that embodied in the question, “Have you finally stopped abusing your spouse?” Either answer – yes or no -- is damning, for if the plaintiff admits on the MMPI-2 or MMPI-2/RF to any moral weakness, this is admissible as a direct attack on the honesty of the plaintiff. On the other hand, if the plaintiff denies a moral weakness on the MMPI-2 or MMPI-2/RF, this is admissible as an added point on the *FBS/FBS-r*. In fact, about 50% of the normative sample for the MMPI-2 answer these moral integrity items in the “moral” direction (Gass & Odland, 2012, 2014). Indeed, the combined influence of these items and the *LRS* symptom items could account for false-positive findings for malingering that have been reported in a number of studies (e.g., Butcher et al., 2003; Berry & Schipper, 2007; Clayton, 2011; Guez et al., 2005; Iverson et al., 2002). Given these considerations and the risks associated with false-positive attributions of malingering, clinicians should think twice before using the *FBS/FBS-r*. Indeed, plaintiff strategy in cases where *FBS/FBS-r* scores exceed cut-offs for malingering may assert that the score in question supports *LRS* stresses, thereby compounding the original injury for which compensation is sought.

Conclusion

In conclusion, shortly before there was a Fake Bad Scale (Lees-Haley et al., 1991) there was the Litigation Response Syndrome (Lees-Haley, 1988). The parallels between the two are unmistakable. The *FBS* contains 23 MMPI-2 items that correspond to elements of Lees-Haley’s *LRS*. When considered along with 12 additional virtue-related items, *credible* problem reporting may readily yield scores that substantially exceed the publisher’s recommended cut-off scores (Ben-Porath, Graham, & Tellegen, 2009). Lees-Haley (1988) opined that the Litigation Response Syndrome (*LRS*) “is a largely unrecognized problem that should be of concern to psychologists.” We strongly concur. We lament the fact that this article has been largely unrecognized and rarely, if ever, referenced in the *FBS/FBS-r* research literature. We share Lees-Haley’s (1988) call for research of this issue. Unfortunately, over the past several decades a *complete absence* of research regarding this issue has been accompanied by an abundance of studies on the *FBS* that have sidestepped the critical relevance of litigation stress (the *LRS*) for understanding the origin of high *FBS* scores. These and other published findings raise important questions for further empirical exploration, while casting doubt about the validity of the *FBS/FBS-r* in civil litigation and clinical settings. Furthermore, they suggest that the use of the *FBS/FBS-r* in civil litigation carries a potentially high risk of being discredited.

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