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**ABNORMAL CONDITIONS OF MIND:
A FORENSIC OVERVIEW**

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INTRODUCTION

Defenses involving mental abnormalities can be divided into those concerning insanity and those concerning abnormal conditions of mind. The psychological considerations involved in the insanity defense are treated in the paper: *Aggression and Insanity: Determining the Capacity to Appreciate* (1996) which is available in your compendium. It can be downloaded from www.forensic-psychology.com. The present paper represents a preliminary effort to address the confluence of psychological and legal factors involved in Abnormal Condition of Mind defenses. Maine's primary statutes in regard to these defenses are:

17-A §39 Insanity

1. A Defendant is not criminally responsible if, at the time of the criminal conduct, as a result of mental disease or defect, he lacked substantial capacity to appreciate the wrongfulness of his conduct. The Defendant shall have the burden of proving, by a preponderance of the evidence, that he lacked criminal responsibility as described in this subsection.

2. As used in this section, "mental disease or defect" means only those severally abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect.

17-A §38 Mental Abnormality

Evidence of an abnormal condition of the mind may raise a reasonable doubt as to the existence of a required culpable state of mind.

The insanity defense in Maine is an affirmative defense, and must be demonstrated by a preponderance of the evidence. Mental abnormality goes to the issue of intent, and forms part of the burden borne by the prosecution and must therefore be proved beyond a reasonable doubt.

Persons found to be not criminally responsible by reason of mental disease or defect suffer, by definition, from an abnormal condition of mind. Not all persons with mental abnormality, however, suffer from mental diseases or defects which preclude the substantial capacity to appreciate the wrongfulness of conduct. Prior to addressing the causes of abnormal conditions of mind, a definition of "mind" is necessary. There exists a multitude of such definitions employed in the fields of cognitive science, artificial intelligence, brain physiology, biochemistry, philosophy and the like. The definition proffered by Nobel Laureate Gerald Edelman is of significant value in forensic settings. Edelman (1992) defines mind as: "a special kind of process depending on special arrangements of matter." This definition provides a vehicle for the working resolution of such vexing issues as the mind-body problem, the brain-mind problem, the vepi-phenomenon solution, dualistic dilemmas and false philosophical barricades brought about by the positing of an enduring "self." These less than forensically useful concepts and ideas appear in various disguises in both forensic and legal texts as well as in examination manuals and strategies. Adopting Edelman's definition of "mind", we now turn to the four causes of abnormal conditions of mind.

ABNORMAL CONDITION OF MIND - CAUSES

I. External causes/agents (alcohol, drugs, toxins, etc.) or insults (brain injuries) can bring about temporary or permanent alterations in the psychological manifestations and physical operations of the mind causing an abnormal condition.

II. Medical conditions can temporarily or permanently impair the psychological and physiological capacities of the mind. These conditions include the major mental illnesses such as schizophrenia, delusional disorder, schizoaffective disorder, and bipolar disorder, as well as anomalies such as partial complex seizure disorder, dementias, and violence during sleep.

III. Habitual abnormalities of perception, judgment, and insight (special processes based on special arrangements of matter) can be brought about by chronic (personality disorders) or acute (PTSD) conditions which can compel behavior and bring about abnormal conditions of the mind.

IV. Culture bound syndromes such as amok (Laotian people and others) or boufee delirante (Haitians and other peoples) as well as contextual "group mind" phenomena such as those seen in Jonestown and Mei Lie are capable of altering the normal exercise of human agency by bringing about abnormal conditions of mind.

The abnormal conditions of mind cited above can result in abnormal states, in syndromes, and in disorders. The most common reference for describing and diagnosing the complex categories encompassing many of these symptoms, states and disorders is the Diagnostic and Statistical Manual-IV Edition published by the American Psychiatric Association. Abnormal conditions of mind are frequently present in persons meeting the diagnostic criteria for DSM-IV Axis I disorders such as the Schizophrenias, the Delusional Disorders, the Dementias, Psychotic Disorders Due to Medical Conditions and the Affective Disorders. These are the classic psychiatric disorders presumably referenced in §39 as "mental disease or defect" which are "severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality." Frequently, the severity and temporal dimensions of these disorders do not result in a lack of "substantial capacity to appreciate the wrongfulness of conduct," but do create an abnormal condition of mind which may have a bearing on culpability. Neurological disorders such as complex partial seizures and temporal lobe syndromes may also create abnormal conditions of mind. The cluster (A) paranoid personality disorder and the cluster (B) Borderline Disorders are the most common personality disorders resulting in abnormal conditions of mind encountered in forensic contexts. Additional cluster (A), cluster (B) and cluster (C) disorders may on occasion bring about abnormal conditions of mind which raise questions of mensrea or the ability to control behavior. The aging of the American population and issues of polypharmacy and novel drugs have brought about significant research interest in violence during sleep. These are examples of so-called Automatism defenses, long a subject of interest to English jurisprudence. These episodes, often seen during the initial stage of sleep architecture are often age related and appear to have a genetic component as evidenced by a family history of sleepwalking and other sleep anomalies. Intoxication at the time of an offense raises complex moral, legal, and psychological issues as they relate to voluntarily and involuntarily intoxicated states. The degree of exculpation secondary to actions performed by persons with physiological addictions ("settled insanity") is again being re-examined in criminal trial contexts. The latter condition, from a psychological perspective, does constitute abnormal conditions of mind. Offenses committed by intoxicated persons raise issues of specific versus general intent as well as accomplice versus principal culpability. These concepts also inform legal questions in regard to persons being prescribed psychoactive medications in community based settings. Increasing interest in the legal clarification of these issues can be expected in light of the advent of new families of psychiatric medications with greater and lesser degrees of untoward side effects and efficacy. Unforeseen pathological intoxication on the part of persons being prescribed various combinations of medications for a variety of psychiatric and physical ills will pose new challenges to the justice system. The Disassociative Conditions cited by DSM-IV such as Post Traumatic Stress Disorder (PTSD) Disassociate Identity Disorder (DID, formerly labeled Multiple Personality Disorder), Fugue States and Depersonalization Disorder can lay a diagnostic foundation for the examination of abnormal conditions of mind as they relate to culpability. The Culture Bound Syndromes mentioned earlier will increasingly be seen as Maine's population begins to include larger numbers of persons from diverse cultures.

ABNORMAL CONDITION OF MIND - CONSEQUENCES

There are four central consequences of particular forensic importance which can be brought about by abnormal conditions of mind:

- I. Abnormal conditions of mind can alter perceptions. Perceptions regarding the meaning and intentions of others are particularly subject to the effects of abnormal conditions of mind.
- II. Abnormal conditions of mind can damage the mind's ability to analyze and rationally integrate information, particularly information as it relates to the actor's "self".
- III. Such abnormal conditions of mind can impair the ability to rationally plan actions.
- IV. Characteristics of abnormal conditions of mind cited above can then result in a diminished capacity/ability on the part of the actor to intend/control ("intentionally") their actions or accurately anticipate ("knowingly") the outcome of their actions.

ABNORMAL CONDITION OF MIND - CONCEPTS

The remainder of this paper consists of a series of themes or concepts which are frequently encountered in State of Mind Defenses. Each of the concepts is briefly defined or addressed. The list will hopefully serve as an overview to be consulted when examining the appropriateness of a State of Mind Defense. I have included legal concepts such as self defense, duress, and provocation in the checklist. It is essential that you provide your expert with an understanding of the meaning of these concepts and their possible relationships to an abnormal condition of mind. I would suggest that you provide your expert with statutes and case law regarding all of these legal terms. By so doing you can expect your expert to be as informed and misinformed as am I in regard to these complex legal issues.

STATE V. TRAIT. This is simplistic, but an important distinction. Generally speaking, insanity defenses will focus on traits in an exacerbated state. Abnormal condition of mind defenses may involve traits and exacerbated states or simply states. This distinction has important ramifications in regard to psychological tests, many of which (particularly the MMPI-2 and the Millon-III) include mechanisms to potentially identify traits. The distinction is of vital importance when personality disorders (particularly borderline personality disorder and paranoid personality disorder) are critical explanatory factors regarding a person's behavior or response to the actions/words of others. The adversarial system will compel defense attorneys to equate personality with pathology. Likewise, a prosecutorial point of view will equate pathology with personality. It is the task of the forensic psychologist using the scientific tools at their disposal to ethically resolve this tension. A critical aspect of this resolution is to determine whether or not the totality of the state or trait, not the

isolated symptoms or signs, is or is not of principal significance in the explanation of the Defendant's behavior i.e. an abnormal condition of mind.

MULTIPLE DATA SOURCES. It is necessary for the forensic psychologist to view a Defendant's self reports and an attorney's theory of the case with a polite but healthy skepticism. The greater the consistency of multiple data source information with the Defendant's self report, the greater the weight which can be accorded the Defendant's self report. Witness statements, pre-event history, psychological tests and diagnostic fit are all important sources of information in determining a Defendant's state of mind at the time of an offense. Selective presentation or withholding of information by the retaining attorney to the expert is not wise and constitutes potentially dangerous practice for case outcome.

AGENCY AND THE ACTOR. The notion of an enduring self is a fundamental belief of much of the world's population. It is an essential tenet of the common law. Psychologists experienced in work with persons suffering from "severely abnormal mental conditions that grossly and demonstrably impair a person's perceptions and understanding of reality" not uncommonly question the assumption of a perpetual "I" or an omnipresent observing ego. In disorders of the self, disassociative disorders, and neurological disorders, the actor may not be the culpable party.

MEMORY IS A CONSTRUCTIVE ACT. Contemporary "common sense" likens human memory to a videotape recorder. There exists no scientific evidence for this fiction, and all available evidence mitigates against any such point of view. The ability to report a "memory" of an event engaged in or witnessed by the actor does not perforce demonstrate that the actor was aware of his or her actions, or intended those actions. Additionally, source attribution errors befall each and every one of us. Criminal defendants and witnesses to criminal acts are no exceptions. In most instances, memory equals awareness equals intention/habit. Such is not always the case, i.e. in abnormal conditions of mind. This obtains as a result of the effects of high arousal, selective attention and selective focus, the aforementioned source attribution errors, the press to close "gestalts", the faulty perceptions characteristic of persons who habitually experience abnormal conditions of mind, and the effects of various drugs. The aforementioned factors can also create a gradient of amnesia. Forgetting is often, but not always, "convenient".

KNOWING VERSUS KNOWLEDGE. This concept relates to the "capacity to appreciate". It is hazardous to substitute the word "know" for the word "appreciate" in forensic contexts. It is equally hazardous to equate the contents of memory with the capacity to know something. Knowing is a process, the outcome of which is knowledge. Knowledge, however, can be demonstrated in the absence of an adequate process or capacity for knowing. Further, the knowledge obtained from a defective process of knowing is not necessarily accurate. Abnormal conditions of mind can result in defective and inaccurate perceptions, analysis, plans, and actions. This principle informs the

commonly encountered differentiation between affective or "full" knowing versus intellectual knowing commonly found in case law and writings regarding the "capacity to appreciate". Whatever its shortcomings, psychoanalysis has clearly demonstrated the role of unconscious motivation in the conduct of human affairs. Psychoanalytically derived psycho dynamic explanations of behavior are seldom warmly welcomed in the forensic arena. Frequently, however, such explanations comport well with the known behavioral patterns described in the DSM-IV and as such can contribute important information regarding the possible presence of abnormal conditions of mind.

STRESS VERSUS STRESSOR. This is another simple but important distinction. Stressors are internal or external events which bring about physiological and psychological changes that we call stress. Different persons respond with different levels of stress to identical stressors. Abnormal conditions of mind are invariably prompted or exacerbated by stressors. Indeed, personality disorders can be conceptualized as maladaptive patterns of stress response to stressors. These responses formerly played an ameliorative or palliative role (i.e. disassociation, projection, denial, etc.) during critical stages of development.

ORGANIZED VERSUS DISORGANIZED CRIME SCENES. This differentiation forms a foundation for crime scene profile analysis. Useful information can be obtained about the condition of mind of an actor by a careful analysis of the crime scene. Forensic psychologists often obtain valuable information regarding state of mind by an examination of photographs, videotapes or a visit to the crime scene itself.

VICTIM/TARGET CHARACTERISTICS. A victim typically has a relationship (accidental, temporary or enduring) to the Defendant whereas a target appears to be the random recipient of a Defendant's behavior. An analysis of victim/target characteristics involves sensitive social considerations both in the report and during testimony. The majority of forensic psychologists are trained as clinical psychologists and are accustomed to a dispassionate but not unkind analysis of human failings. Awareness of this unintentional insensitivity is well advised on the part of the retaining attorney.

DSM-IV AND MULTIAXIAL APPROACH. Each successive edition of the DSM is longer and more complex. The DSM is a valuable research document. It is to be employed cautiously in forensic settings (see pages xxiii-xxiv). Legitimate alternative systems of diagnosis also exist. Axis IV (Psycho social and Environmental Problems) and Axis V (Global Assessment of Functioning) are less well systemized and operationalized than Axis I (Clinical Disorders) or Axis II (Personality Disorders and Mental Retardation). I believe a consensus exists that the reliability and validity of the Axes probably can be ranked in descending order from Axis I to Axis V. Axis V is infrequently employed in forensic settings but is a valuable way of organizing information regarding a person's overall functioning. I recommend its utilization. The DSM-IV is only as good as the history, mental

status examination, multiple data sources, and psychological testing employed in concert with the diagnostic criteria. The State Forensic Service has a deservedly excellent reputation for obtaining historical documentation concerning military service, education, hospital records, criminal history and the like. You are entitled to this information. Obtain it as early as possible. The arduous and not inexpensive process of obtaining relevant history is the retaining attorney's obligation. The timely provision of this information to the expert is important. Likewise, an early opportunity to evaluate the Defendant can prove advantageous. The DSM-IV contains a diagnostic decision tree. This too can be useful. Ultimately, however, it is the forensic expert's integration of all material which provides the foundation for their opinion.

PSYCHOLOGICAL TESTING. Psychological testing is usually employed in forensic assessments. There are a wide variety of instruments available and specific circumstances or characteristics of the Defendant will dictate which tests are employed. Computer assisted scoring and interpretation of personality measures (particularly the MMPI-2 and the Millon III) are readily available. I prefer to employ independent laboratories to score and analyze these instruments. I believe the benefits of such utilization outweigh the risks. Testing serves to provide crosschecks to clinical work, generates alternative hypothesis, and assists in the maintenance of objectivity and ethical practice. Regrettably, psychological tests and their construction and interpretation often become "straw men" in forensic contexts focusing on abnormal conditions of mind.

PROVOCATION, DURESS AND SELF DEFENSE. These are complex legal issues. Elements of these three defenses will often co-mingle in State of Mind trials. It is also important to acquaint your expert with the meaning of "lesser included offenses". These are all complicated concepts, and do not expect a non attorney forensic expert to quickly grasp all of their subtleties and implications. It is legitimate to request of your expert an exploration of the possible relevance of these defenses, but it is unwise and unkind to expect the creation of "facts" to meet the statutes and case law that informs these defenses. "Reasonable person" standards often form parts of these statutes and the case law. Typically, persons suffering from abnormal conditions of mind are not "reasonable." This tension is typically quite difficult for psychologists to fully grasp given their training and orientation. Psychologists inhabit a deterministic world. The collision of the philosophical notions of determinism and free will encountered in the courtroom is often most unsettling for the expert.

MALINGERING VERSUS DESPERATION. The competent forensic psychologist approaches their task with a high index of suspicion in regard to malingering. Defendants are typically in a high state of stress and anxiety. This state of desperation often leads to an overstatement or overemphasis on symptoms or lack of responsibility. A critical analysis of this situation is required or malingering will be misdiagnosed in either a false positive or false negative direction.

ANGER VERSUS AROUSAL. Many, but not all, abnormal conditions of mind are accompanied by high degrees of arousal. Hypervigilance, sleep loss, paranoia, denial, altered chemical balances due to medication, intoxicants and the like are common in situations leading to behavior which is examined in a criminal trial. Anger is a common and reasonable explanation for most illegal behavior. There is a compelling simplicity to the specification of anger as the explanation for crimes of violence. In most instances, anger (often coupled with greed) is sufficient to explain the actions of criminal Defendants who are indeed guilty of the offense as charged. Abnormal conditions of mind, however, can lead to the exhibition of behavior that appears motivated or driven by anger when in actuality conditions promulgating abnormal conditions of mind as identified earlier have greater explanatory value. A critical analysis of the role of anger in criminal conduct should explore the role of diagnostic entities and their relationship to anger (i.e. paranoia, a manic state, intoxication, etc.) and the Defendant's history as it relates to anger and aggression. Victim/Target characteristics, the level of crime scene organization, pre-planning, efforts to avoid detection and apprehension, recent stressors/losses, and circumstances antecedent and following the proscribed act are all areas of critical inquiry to determine whether or not the proscribed action was the product of an abnormal state of mind rather than or in addition to "anger."

GOAL DIRECTION AND ITS RELATIONSHIP TO INTENTION. Intentional behavior is indeed goal directed. The appearance of goal direction, however, does not necessarily demonstrate the existence of intention. An examination of the Defendant's "goals" must include an assessment of the Defendant's ability to accurately perceive, analyze, plan and control their behavior. The observation that something happened does not mean that the actions which brought about the result were directed towards that goal. Further, compelled behavior is not intentional. The role of unconscious motivation, abnormal perception, and other accompaniments which characterize an abnormal condition of mind can result in behavior that is organized, efficient and effective but not intended in the legal sense. Whether this so-called goal directed behavior is intentional or not is the ultimate issue to be decided by the finder of fact in cases where the abnormal condition of mind defense is raised.

§ 6-53. Instruction 53 — Abnormal Condition of Mind.

Intent or mental state ordinarily cannot be proved directly, because there is rarely direct evidence of the operations of the human mind. But you may infer a person's intent or state of mind from the surrounding circumstances. You may consider any statement made and any act done or omitted by the person, and all other facts in evidence which indicate his state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. Also consider whether evidence of an abnormal condition of mind at the time of the events alleged, raises a reasonable doubt as to the existence of a required mental state.

An abnormal condition of mind is a mental disease or defect which negates the existence of the mental state required for the crime. You should consider any evidence of abnormal condition of mind in determining whether the State has proven the necessary mental state on each of the charges. However, the ultimate question is not whether the defendant had an abnormal condition of mind, but whether the defendant acted [intentionally, knowingly, recklessly or with criminal negligence].

It is entirely up to you to decide what facts to find from the evidence. The burden remains on the State to prove each element of each offense charged beyond a reasonable doubt.

COMMENT**17-A.M.R.S.A. § 38.**

In *State v. LeBlanc*, 559 A.2d 349, 351 (Me. 1989), the Law Court noted that in abnormal condition cases, the issue is whether evidence of the defendant's abnormal condition, at the time of the event, raises a reasonable doubt as to the existence of the requisite mental state. The issue is not whether the defendant lacked capacity to form the mental state, but whether, because of the abnormality, the mental state existed at the time.

Instruction on the abnormal condition issue may be refused, and testimony by lay persons may be excluded if the offered evidence does not tend to show some impairment of a defendants "cognitiveal or volitional

faculties" at the time of the event. *State v. Barrett*, 577 A.2d 1167, 1170-1171 (Me. 1990).

See also *State v. Likay*, 458 A.2d 427 (Me. 1983) which generally discusses the abnormal condition issue.