

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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DSM-5 vs. DSM-IV-TR: The Workers' Comp Solution

For those of you who have been regular readers of my newsletters you probably recall that since June, 2013, I have been writing about the DSM-5 and some of the many problems with this diagnostic manual that adversely affect personal injury and workers' compensation litigation. In this current newsletter I write about one possible solution to the problems. Let's review a little of what is known.

The DSM-5 was published at the end of May, 2013. This work was produced by a group of 1,992 contributors and advisors (I actually counted all their names) consisting of psychiatrists, psychologists and other mental health professionals. The leader of that group was Dr. David J. Kupfer, a psychiatrist and professor at the University of Pittsburgh, who was designated the DSM-5 Task Force Chair. Unfortunately, the publication of that manual has led to tens of thousands of mental health professionals from all over the world to challenge the credibility and usefulness of that manual. In response to the major flaws in the DSM-5 these individuals have created dozens of petitions and boycotts. The credibility to this grass roots "movement" has in large part been provided by Dr. Allen Frances, a psychiatrist and a professor emeritus at Duke, who as the chairperson of the DSM-IV and DSM-IV-TR Task Force was in charge of producing both of those diagnostic manuals.

In addition to Dr. Frances, Dr. Thomas Insel, the psychiatrist who has been the Director or head of the National Institute of Mental Health since 2002, pointed out

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in his April 29, 2013 writing found on the Internet that many of the changes to be found in the DSM-5 are "contentious" and that the weakness of the DSM-5 is "its lack of validity." In fact, on May 13, 2013, Dr. Insel wrote that he believes that the future of psychiatric diagnoses is a new type of taxonomy or diagnostic system based on genetics, neuroscience and behavioral science but that this is a "long-term undertaking" that will take "years to fulfill." Reading between his lines it appears that it's his opinion that we in the trenches will just have to "make do" with what we have until a better system is available. Of course, given the rate of progress in neuroscience's ability to understand the brain this will take 100 or more years. In the meantime, given the multiple problems in the DSM-5, large numbers of mental health professionals believe that the best way to "make do" is to continue using the DSM-IV-TR. In this regard, perhaps the most telling comment about the credibility of the DSM-5 is the decision by the Center for Medicare and Medicaid Services (CMS) to require that all healthcare providers covered by HIPAA use the International Classification of Disease manual (the ICD-10), not the DSM-5, starting in October 2014.

For those of you who have not been following the DSM-IV-TR vs. the DSM-5 controversy the major flaws in the DSM-5 include:



1. Stating that a doctor's diagnosis can be based on the patient's complaints and the doctor's subjective judgments in preference to objective diagnostic criteria.
2. Eliminating the Global Assessment of Functioning (GAF) Scale for assessing psychiatric disability and replacing it with the patient's ratings of their subjective complaints.
3. The openly stated rejection of the needs of the legal community in developing the DSM-5.
4. Creating new disorders based on the patient's complaints and doctor's subjective judgments.
5. Defining previously observed "normal" behaviors, such as those associated with aging or grief, as psychological disorders.
6. Greatly expanding the number of people that qualify as being mentally ill.
7. Turning everyday concerns into diagnosable mental disorders.
8. Opening the door to increased litigation and claims.

The bottom line here seems to be that the DSM-5 is not usable for forensic or medical-legal purposes.

State government documents typically indicate how a psychiatric injury is to be determined compensable for workers' compensation cases, often identifying a version of the Diagnostic and Statistical Manual of Mental Disorders as a source. For example, the California Labor Code section 3208.3 states that, "A psychiatric injury is compensable if it is a mental disorder which causes disability or need for medical treatment" and it is diagnosed using the DSM-III-R or "the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine." Given the writings of individuals such as Dr. Frances and Dr. Insel, as well as thousands of their equally

dissatisfied colleagues, it is apparent that the DSM-5 has not been "generally approved." The simple solution is to change the statutes such as California's Labor Code section 3208.3 to read that the diagnosis of a mental disorder should be made "using the terminology and criteria" found in the DSM-IV-TR. This would avoid all of the multiple pitfalls in the DSM-5. Most importantly, there is legal precedence for not using the most up-to-date medical manuals in the workers' compensation system. In this regard, Colorado's Rule 12 for Permanent Impairment Rating Guidelines requires the use of the Third Edition of the "Guides to the Evaluation of Permanent Impairment," which was published in 1991. Similarly, California's SB899 and Labor Code section 4660 (b) require the use of the Fifth Edition of the "Guides to the Evaluation of Permanent Impairment" for determining permanent disability, which was published in 2000, although the Sixth Edition was published in 2007!

If you have an interest in seeing the DSM-IV-TR continued to be used in workers' compensation one thing you might consider doing is making your opinions known to political representatives. In California's capital of Sacramento you can contact Assembly Member Henry Perea, the Chairman of the Insurance Committee, Assembly Member Curt Hagman the Vice Chair of that committee, Senator Ted Gaines the Vice Chair of the Senate Insurance Committee and as long as your doing it, why not Governor Jerry Brown. Clearly, their addresses and phone numbers just as the addresses and phone numbers of most policy makers are easily accessible through a Google search on the Internet.

Pre-deposition consults involving reports of a

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