

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Depositions of Psych Doctors: Persistence Gets The Win

In my March, 2014 newsletter I pointed out that a Wash-In report is one in which the doctor has concluded that the patient has a disorder or suffered a psychiatric injury despite that fact that there are little or no data supporting that conclusion. I then went on to note how an attorney can deal with a psychologist's or psychiatrist's Wash-In report.

In my April, 2014 newsletter I pointed out that a Wash-Out report is one in which the doctor has concluded that the patient does not have a disorder and has not suffered a psychiatric injury by simply turning a deaf ear to the data, typically by not obtaining or providing all the information needed to come to a reasonable conclusion. I then described how an attorney can deal with a psychologist's or psychiatrist's Wash-Out report.

In both newsletters I provided a basic strategy for questioning the Wash-In or Wash-Out AME or PQME during a deposition or at trial. I pointed out that some form of attorney coaching is typically needed prior to taking the doctor's deposition since the doctor has had graduate training in their area of expertise and while the attorney knows the law, they usually are not an expert in psychology or psychiatry. Getting a pre-deposition or pre-trial consult or report simply levels the playing field.

"When the doctor has not been responsive or you do not understand their answer: Simply go back to the question and repeat it!"

In some of my other newsletters, which can be accessed at my website, www.drleckartwetc.com, I have pointed out that attorneys need to understand that psychological reports are based on as many as five sets of data.

1. The patient's life history and their presenting complaints.
2. The doctor's report of their face-to-face observations of the patient during the Mental Status Examination.
3. The objective psychological testing data.
4. The doctor's review of the patient's medical records.
5. Any collateral sources of information available to the doctor in the form of interviews of the patient's friends, relatives and/or co-workers. This information is almost never present in a workers' compensation or a personal injury case.

In those newsletters I have frequently discussed that a doctor's diagnosis is the keystone of every report and all of the data that are presented must be used by the doctor to arrive at a DSM-IV-TR psychological diagnosis. Moreover, unless that diagnosis is dead on correct, the doctor's report is in trouble since the doctor's diagnosis is typically the weakest point in a psych report.

Browse Dr. Leckart's Book at
www.DrLeckartWETC.com

In writing my pre-deposition and pre-trial consultation reports I provide attorneys with a series of questions that will expose the flaws in the doctor's report.

My main focus is to ask questions during cross-examination of the doctor that are designed to reveal if there are any data or information in the doctor's report supporting his or her diagnosis. In this regard, I have one "rule": Never ask the doctor about the patient. Always ask the doctor about the contents of the report. The reason for this is quite simple. If you ask the doctor about the applicant he or she can feel free to provide information not in his or her report that may justify some of their conclusions. Obviously, that information may or may not be correct for a variety of reasons. However, if you confine your questions to what is in the reports, no new "evidence" can find its way into the testimony and your outcome will most likely be far superior.

Essentially, when it comes to providing questions I am often like the title of that old song, "Johnny One Note." Specifically, the main question that can be used over and over again in slightly different contexts is:

"Dr. Smith, where are the data?"

More definitively,

"Dr. Smith, where in your report can I find (e.g., the Mental Status Examination data supporting your conclusion that Mr. Jones's mood was clinically depressed)?"

or,

"Dr. Smith, where in your report can I find (e.g., the psychological testing data that supports your diagnosis of a Major Depressive Disorder)?"

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or,

"Dr. Smith, where in your report can I find a list of the patient's symptoms or complaints, including information about their frequency, intensity, duration, onset or course over time, indicating that Mr. Jones had a Generalized Anxiety Disorder?"

Frequently, after an attorney takes a doctor's deposition I seek out feedback about how the deposition went. Most often the attorneys say things like, "I destroyed the doctor." Or, "They didn't have any answers for my questions." I also frequently get a chance to read the transcripts from these depositions so I know what actually transpired and can continue to improve my reports to anticipate some of the problems.

In reading those deposition transcripts, I have found that a somewhat significant number of attorneys have some trouble carrying out what I outline as an effective strategy. One of the most frequent problems is persistence or assertiveness. I have found this generally surprising since it used to be my opinion that attorneys are like bulldogs who will grab a hold of your leg and not let go until they get what they want. However, reading deposition transcripts has taught me otherwise. Here's what I've learned.

Some attorneys are not persistent at all. Perhaps worse yet they are easily misled. Doctors in depositions will frequently resort to non sequiturs, verbiage that has nothing to do with the questions being asked. In less polite society this is called a "snow job." Their answers to simple questions are frequently indirect and obscure.

When "snow jobs" occur during a deposition the attorney has one simply beautiful response that will always work and will drive the doctor crazy! When the doctor has not been responsive or you do not understand their answer: Simply go back to the question and repeat it!

Let's say the doctor has diagnosed a Major Depressive Disorder. According to the DSM-IV-TR, 8 of the 9 possible symptoms of a Major

Depressive Disorder carry the requirement that they be present at least “nearly every day” in order to be counted. However, let’s say that the doctor has no data in their report dealing with the frequency of the patient’s symptoms. Because of this fact, you’ve now asked the doctor, “Where in your report can I find a history of the patient’s symptoms that indicate that the patient had symptoms at least nearly every day?”

One doctor’s actual response to an almost identical question was:

“As a – well, it’s implied, especially, technically, you’re correct, it’s directly not stated, but I – and we’re taking certain things for granted as experienced clinicians, but when people are passively suicidal and want out, that pretty much, you know would include this checklist.”

Now this is a “snow job” in which the doctor hasn’t provided a direct and clear answer to the question but a variety of “word salad,” including a completely obscure reference to some “checklist” not found in the report.

So, if this happens during a deposition the attorney should simply ask again, “Where in your report can I find a description of the history of the patient’s symptoms that indicate that the patient had symptoms at least nearly every day?”

In one case the doctor, instead of honestly answering that question by saying, “I don’t have that history in my report,” continued with the “snow job” by actually saying, “Well, you know her depression dates back to the date of injury when she got depressed.” Again, a completely non-responsive answer.

So you ask again, “Where in your report can I find a description of the history of the patient’s symptoms that indicate that the patient had symptoms at least nearly every day?”

You keep asking that question regardless of the *non sequiturs* and non-responsive answers until they eventually are forced to say, on the record, “I don’t have that history in my report.”

Well, I never went to law school but I know that this is a WIN! The doctor has admitted that they do not have history to support their diagnosis. Now you get to ask the rest of the questions in the same manner, the answers to which indicate that the doctor did not have sufficient data in other areas to warrant the correct diagnosis of a Major Depressive Disorder. Having done so, you are well on your way to getting a Wash-In report either thrown out of court or negotiating a favorable deal with the opposing counsel who has few choices but to throw in the towel.

In closing, let me tell you that providing pre-deposition and pre-trial consultation reports for attorneys in workers’ compensation and personal injury litigation has become my major interest in my forensic practice. If you would like to see one of these reports or all of my newsletters that contain many helpful suggestions, visit my website at www.drleckartwetc.com. Once there you can also read or download a free copy of the most recent version of my book [Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters](#). If you have any questions, send me an email and there is no charge for an answer. [Finally, if I can’t destroy the offending report, I’ll tell you just how good it is and why you should be happy with it and there will be absolutely no charge!](#)

This is the sixty-fourth of a series of monthly newsletters aimed at providing information about psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers’ compensation and personal injury. If you have not received some or all of our past newsletters listed on the next page, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.