THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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THE TEN COMMANDMENTS OF MEDICAL-LEGAL PSYCHOLOGICAL REPORTING

In the last two months I wrote about the Ten Commandments of Mental Status Examinations and the Ten Commandments of Psychological Testing. The response was so good I thought I would press my luck and write about the Ten Commandments of Medical-Legal Psychological Reporting. As we know, medical-legal psychological and psychiatric reports are written for a variety of purposes but those I am most familiar with deal with personal injury and workers' compensation litigation.

1. The Doctor Shall Use the DSM-IV-TR in preference to the flawed DSM-5

Every psychological and psychiatric report written for the courts has as its cornerstone the doctor's diagnosis, or lack thereof. If the doctor's diagnosis does not hold water then the remainder of their report, including their opinions about causation, the extent of the disability, apportionment to prior injuries or events, and the need for treatment are completely worthless. Psychological diagnoses are made according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM). The most current version was published in May, 2013 and is called the DSM-5. Unfortunately, the DSM-5 has received massive amounts of criticism and boycotting for some very good reasons that were clearly outlined in my earlier newsletters, which if you did not receive, you can access on my website at www.DrLeckartWETC.com. Thus, most practitioners are continuing to use the DSM-IV-TR instead of the new and substantially flawed DSM-5.

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

> *"There are many ways to screw-up when you are conducting a psychological or a psychiatric evaluation of someone who has a medical-legal case. Following the Ten Commandments of Psychological Reporting should reduce the frequency with which these screw-ups occur to a bare minimum."*

2. The Doctor Shall Used Properly Licensed Ancillary Personnel to Assist in Their Evaluation

Some psychologists and psychiatrists are not content with conducting evaluations and providing treatment by themselves. Many have multiple offices and employ a variety of individuals who assist them with both evaluations and treatment. Presumably, this increases the doctor's take-home pay. However, some physicians have been known to use a variety of ancillary personnel to assist in evaluations and treatment, not all of whom are sanctioned by various laws to provide the services they are being paid to perform. For example, some doctors use the services of Marriage and Family Therapists to provide counseling or psychotherapy. However, if the patient has a mental disorder that is not related to their marriage or family adjustment this may be a violation of Section 4980.02 of the Business and Professions Code of California. Additionally, in workers' compensation evaluations in California some Panel and Agreed Medical Evaluators use non-licensed personnel to assist them in reviewing medical records or licensed personnel to interview the patient and write as well as sign the report. The former appears to be a violation of Labor Code section 4628 and the latter appears to be a violation of Labor Code section 4062.3 which seems to define the concepts of Panel and Agreed Qualified Medical Evaluators in the singular, not plural, implying that one doctor, not two or more, should conduct the evaluation and sign the report.

3. The Doctor Shall Take and Report On a Complete History

In order to diagnose any psychological disorder correctly it is necessary to have a complete history of the patient in general, and their current symptoms or complaints, in particular. A complete history of a patient's symptoms is taken so that the doctor can be assured and demonstrate to the reader of his or her report that the patient meets all of the required criteria found in the DSM-IV-TR for diagnosing the disorder. A complete history of an individual's current symptoms must include information about the qualitative nature of those complaints as well as data about their frequency, intensity, duration, onset and course over time.

4. The Doctor Shall Administer and Report on a Mental Status Examination

A Mental Status Examination produces a set of observations that are made by the doctor during a face-to-face interview using a relatively standard set of examining techniques and questions. It provides information about the patient's orientation and appearance, general behavior, mood, memory, attention or concentration, cognitive abilities, general abilities, and social behaviors. Since individuals with mental disorders frequently present with deficits in one or more of these areas the presence of Mental Status Examination observational data is essential in arriving at and communicating the nature of a psychological disorder.

5. The Doctor Shall Never Give Psychological Tests to the Patient to Take at Home

Doctors, like everyone else, tend to appreciate shortcuts. One shortcut that has been used by psychiatrists and psychologists alike is to mail the psychological tests or historical information forms to the patient before the examination in the doctor's office so that the patient can provide the needed information and save time in the doctor's office. Unfortunately, this is a "no-no" as, among other factors, one can never be sure who completed the tests or who provided the data on an information form that is not completed in the doctor's office and overseen by a test proctor.

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6. The Doctor Shall Use Only Objective, Valid and Reliable Tests

There are thousands and thousands of psychological tests. In fact, I was a college professor for thirty years and one of the assignments I gave to students in my advanced classes was to write tests for a variety of psychological issues such as depression, anxiety, self-esteem, honesty, etc. etc. etc. Unfortunately, this was just an academic exercise. In order to use a psychological test in a clinical or forensic practice that test must be objective, valid and reliable. An objective test is one that can be scored by anyone and that comes up with an observable and unmistakable score. A subjective test, such as one that requires the patient to complete a sentence, is not objective in that there is no agreed upon way to score or interpret the patient's productions. A valid test is one that is known to measure what it says it measures. A reliable test is one that comes up with the same answer every time the patient takes the test. There is a vast body of psychological testing literature that identifies the validity and reliability for a large number of tests. If a test is not objective, reliable and valid it cannot provide any useful information about a patient and should never be used in a medical-legal context.

7. The Doctor Shall Use Tests Capable of Providing Information About The Patient's Credibility

The first responsibility of any medical-legal examiner in psychology or psychiatry is to determine the patient's credibility. After all, most of the information obtained in a psychological examination emanates from the patient's mouth, so

if that mouth's statements cannot be trusted, the examination's findings are contaminated. There are only a handful of psychological tests that have known validity scales capable of assessing the patient's credibility or test-taking attitudes. The most popular and familiar is the Minnesota Multiphasic Personality Inventory (MMPI), which is available in a number of versions. The only alternative to an objective test score demonstrating the patient's credibility is the doctor's verbal assurance that, "I believe Ms. Smith." Which one do you think has more credibility?

8. The Doctor Shall Tell the Truth

This commandment would seem to be a no-brainer except for the fact that psychological diagnoses and other medical-legal conclusions always have a gray area. Psychologists and psychiatrists also like to eat and this requires an economically productive practice. For some doctors that means giving one referral source or another the benefit of the doubt and either "washing in" or "washing out" a patient with a claim. A "wash-out" is one in which the doctor bends over backward and finds no psychological disorder or at least, no psychiatric injury. A "wash-in" is one in which the doctor bends over backward and finds a psychological disorder and a psychiatric injury in what might be an ambiguous case. I personally believe that neither is reasonable but that the best way to conduct oneself is to find out what is true and just write it up that way. In the long run, that is the most successful approach as no one is fooled by the "wash-in" or "wash-out" report, especially when the attorneys have the opportunity to get an independent opinion about the "wash-in" or "wash-out" doctor's report from a consultant who has nothing on the line.

9. The Doctor Shall Present Sufficient Data To Support Their Diagnoses

As we have seen, the keystone of each and every psychological report is the doctor's diagnosis. If the diagnosis is not demonstrably correct then all of the doctor's conclusions that rest upon that diagnosis are unsupportable. Well, what is sufficient data? Very simply, the doctor's report should be based on the patient's life history and their presenting symptoms or complaints, the results of the doctor's face-to-face Mental Status Examination, the objective psychological testing data, the patient's medical records and any collateral sources of information in the form of interview data obtained from the patient's friends, relatives or co-workers. All of those data should form a cohesive picture of the patient with any non-conforming findings carefully explained. Without a consistent and cohesive picture there are insufficient data to support the doctor's conclusions.

10. The Doctor Shall Remember that "Rule Out," "Versus" and "Deferred" Diagnoses Mean They Have Inadequate Information to Understand that Patient

On numerous occasions I have seen doctors use "Rule Out," "Versus" and "Deferred" diagnoses. All three of these terms are the same in that they are explicitly stating that they are not sure if the patient has a specific diagnosis or they are not sure which of two diagnoses is more likely to be correct. Unfortunately, these three terms simply mean that the doctor has obtained inadequate information to arrive at a clear diagnostic conclusion. In the case of a litigated case one always has to wonder why the doctor chose to complete their examination and write their report without obtaining sufficient information to understand the patient. Regardless, when this is what has happened the doctor has written a report that does not have sufficient information to understand that patient, a terrible state of affairs for everyone involved.

In short, there are many ways to screw-up when you are conducting a psychological or a psychiatric evaluation of someone who has a medical-legal case. Following the Ten Commandments of Psychological Reporting should reduce the frequency with which these screw-ups occur to a bare minimum. Moreover, if you are an applicant or defense attorney or an insurance adjuster, understanding where these bodies reside will go a long way to effectively resolving issues in litigation and possibly cross-examining the psych doctor. Similarly, if you are a psychologist or a psychiatrist, conducting your evaluations within the confines of these Ten Commandments will go a long way to creating a successful and enduring practice.

This is the sixty-seventh 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.