

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross Examining Psych Doctors Who Have Provided a "Rule Out" Diagnosis

One major problem that exists in medical-legal reports of a mental health evaluation occurs when the evaluating psychologist or psychiatrist indicates they are unsure if the disorder they diagnosed was actually present in the claimant. It is very likely you have read a report from a psychologist or psychiatrist whose diagnostic uncertainty went undetected. One way that examiners state that uncertainty is by providing a Rule Out diagnosis. The question then becomes, "What should the attorney ask during a cross-examination to expose the doctor's diagnostic uncertainty?"

In order to answer that question, it is necessary to understand the nature of a Rule Out diagnosis. In this respect, the specification of a "Rule Out" diagnosis indicates diagnostic uncertainty. For example, by providing a "Rule Out a Major Depressive Disorder" the mental health practitioner is explicitly stating that he or she is unsure whether the disorder was actually present in the claimant. However, just why the examiner would choose to write a comprehensive report without obtaining

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sufficient information to be certain about their diagnosis is typically not discussed anywhere in that document. Nevertheless, when the examiner uses a "Rule Out" diagnosis they have clouded the issue concerning the claimant's psychological status. In this regard, the absence of definitive information about the claimant's psychological status can be considered a substantial flaw in their report.

When a Rule Out diagnosis is identified in the evaluator's report, usually on Axis I or Axis II, the question remains "What can be done about that Rule Out diagnosis?" In this respect, an attorney can expose the doctor's substantial flaw by asking a few simple, yet pointed questions. For example, the attorney may wish to ask the doctor some variation of the following five questions.

1. Doctor, will you please confirm for me that you provided a "Rule Out" diagnosis in your report?
2. Doctor, will you please confirm for me that a "Rule Out" diagnosis is only used when there is diagnostic uncertainty and the diagnosing mental health practitioner does not have enough information to ascertain that the person has a mental disorder?

3. Doctor, by using a “Rule Out” diagnosis aren’t you explicitly stating that you did not understand the claimant’s psychological condition?
4. Doctor, by using a “Rule Out” diagnosis haven’t you explicitly stated that you were not sure if the claimant had a psychological disorder?
5. Doctor, will you please explain to me where in your report I can read an explanation of why you would choose to write a comprehensive medical-legal report without obtaining sufficient information to arrive at a reasonably medically probable diagnosis?

In summary, medical legal reports of a psychological or psychiatric evaluation are often riddled with substantial flaws such as a Rule Out diagnosis. When the diagnosing mental health practitioner provides a Rule Out diagnosis they are explicitly stating that they did not have enough information to determine if the claimant had a psychological disorder. In these circumstances, attorneys should challenge the doctor’s diagnosis on cross-examination. Further, when taking the deposition of a psychologist or psychiatrist who has offered a Rule Out diagnosis, the attorney will be best prepared to expose this flaw, as well as the variety of other flaws that likely exist in the report, in a deposition or trial setting with a carefully formulated line of questioning.

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