

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Deposing Psych Doctors: Persistence is Key

Deposing psychologists and psychiatrists can be met with a variety of challenges. One challenge that attorneys can almost always count on is the presentation of non-sequiturs and/or non-responsive answers from the doctor to the questions posed by the attorney during deposition.

A review of the previous newsletters I have written, available for download from my website www.drleckartwetc.com, will reveal my recommendations or "rules" for attorneys to consider when deposing psychologists and psychiatrists. In addition to the recommendation that attorneys direct their questions at the doctor's diagnosis it is highly recommended that the attorney never ask the doctor about the patient, but about their report.

In addition to the recommendations noted above, another "rule" I recommend attorneys consider following in taking the doctor's deposition is be persistent! It is quite possible that in the cross-examination of psychologists and psychiatrists you

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will find their responses often 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." The doctor's answers to simple questions are frequently indirect and obscure. When the doctor has not been responsive or you do not understand their answer: simply go back to the question and repeat it! You keep asking that question regardless of the non-sequiturs and non-responsive answers until they eventually are forced to provide an answer, which often comes down to their statement on the record, "I don't have those data in my report."

In a recent deposition transcript I reviewed where the doctor being deposed was a respected psychiatrist in Northern California, the attorney demonstrated persistence in getting the doctor to answer the questions posed. The exchange during deposition was as follows:

ATTORNEY: Doctor, you discussed psychological tests in your report. Did you administer all of those psychological tests in your office?

DOCTOR: The tests are self-administered, and the claimant took them as a questionnaire.

Browse Dr. Leckart's Book,
**Psychological Evaluations in
Litigation: A Practical Guide for
Attorneys and Insurance Adjusters**
at www.DrLeckartWETC.com

ATTORNEY: So, he completed all the tests that you have discussed in your report, in your office with you?

DOCTOR: He came into the office in the morning when he received the tests.

ATTORNEY: Doctor, during your evaluation, did you supervise the applicant taking the tests?

DOCTOR: You're right, he was in my office suite when he took all of the tests that are discussed in my report.

ATTORNEY: Doctor, during your evaluation, did you supervise the applicant taking the tests?

DOCTOR: Me? No.

ATTORNEY: Did any person on your staff watch the applicant take the tests?

DOCTOR: No, I don't believe there was anyone in the room, but I could be wrong.

ATTORNEY: Did any person on your staff watch the applicant take the tests?

DOCTOR: But there could have been another claimant at the same time.

ATTORNEY: Doctor, I need you to answer one question, did any person on your staff watch the applicant take the tests?

DOCTOR: Oh, not that I am aware.

Clearly, deposing psychologists and psychiatrists who respond to questions in an obscure and indirect manner can be often challenging and sometimes frustrating to the attorney. In these situations, one way for the attorney to overcome the challenge and frustration is to be calm and persistent. Persistence in questioning a doctor during deposition testimony should be a key component of every attorney's strategy. Imagine for a second a transcript of the doctor's deposition testimony that is riddled with non-responsive answers and non-sequitirs. That transcript probably would not be worth the paper it is printed on other than for it demonstrating the doctor's obscure responsiveness.

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involving reports of an**

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for more information)

This is the seventy-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.