

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Deposing Psych Claimants: Exposing Wash-In Reports

Psych doctors make two kinds of serious errors when writing evaluative reports for the courts. The first is failing to diagnose a disorder that is present. The second is diagnosing a disorder that is not there. Reports with these errors are called "Wash-Outs" and "Wash-Ins," respectively.

For a detailed discussion of Wash-Out and Wash-In reports see my Newsletters of March and April, 2014 on my website at www.DrLeckartWETC.com.

I help attorneys expose Wash-Out and Wash-In reports with Apricots™ that assist them in cross-examining the doctor. An Apricot™ describes a psych report's flaws in jargon-free language, offers specific techniques to Cx the doctor, and provides multiple questions to get those flaws on the record despite the doctor's non-cooperative behavior. Apricots™ are work product privileged reports useful in any jurisdiction. Lots of information about Apricots™ and self-help techniques for cross-examining doctors are on my website.

Another opportunity to expose a Wash-Out or Wash-In report occurs when deposing the claimant.

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

If in reading a psych report you find reason not to trust its credibility you can send it to me for a thorough analysis.

But, "How does one expose the flaws in a doctor's report and the weakness in an error-laden case when deposing the claimant?"

The essential element for revealing the flaws in a Wash-In report when taking testimony from the claimant is ridiculously simple!

Let's say that the doctor has diagnosed a Major Depressive Disorder. The first step is finding the diagnostic criteria in the American Psychiatric Association's diagnostic manual. The second and last step is simply to ask the claimant to describe their current symptoms or complaints and see if their responses match the diagnostic criteria. I have read hundreds, if not thousands of deposition transcripts and I can't recall this ever having been effectively accomplished.

Now, here's a script for use in taking the claimant's deposition.

"Mr. Smith, I would like you to provide me with a complete list of your current physical and psychological symptoms or complaints in a specific way I am about to describe. First, I would like you to understand that by "current" I mean anything that has been physically or psychologically wrong with you in the approximately last 30 days. Second, I

don't want you to provide me with any details of those symptoms, just a list. Third, you can provide the list of your complaints in any order. And fourth, don't worry about forgetting to put a symptom on the list since we can always add one later. Is this clear?"

Once you have obtained a complete list of current symptoms, it is necessary to ask the claimant to describe the symptom as he experiences it as well as its frequency, intensity, duration, onset and course of those symptoms over time. So for each of the symptoms ask the claimant to estimate how many days a week they have each symptom, how intense each symptom is, how long does each last, when did they first have that complaint, and how has the complaint changed over time since its inception.

The only somewhat problematic issue is obtaining information about the intensity of a symptom. In this regard, the intensity of a symptom has to be subjectively assessed. This can be done as follows: "Mr. Smith, with regard to your complaint of _____ I would like you to tell me how big of a problem this is for you on a ten-point scale by picking a number between 1 and 10 where "1" is the least severe problem that could be called a problem and "10" is the most intense problem imaginable."

Now once you have obtained that information all you have to do is compare it to the criteria in diagnostic manual and you will know if Mr. Smith currently has sufficient symptoms to warrant the doctor's diagnosis. If not, at the very least you have eliminated the possibility that the patient currently has the disorder.

The next step is to address the possibility that Mr. Smith might have had a Major Depressive Disorder at the time of the doctor's examination. The script for this is just as easy!

"Mr. Smith, now I would like you to provide me with a complete list of all of the physical and psychological symptoms or complaints that you had at the time you were examined by Dr. Jones. As you did with your current symptoms tell me about every symptom you had when you met with Dr. Jones. Once again, I don't want you to provide me with any of details of those symptoms just a list. Is this clear?"

Once you have established that Mr. Smith is comfortable with the notion that he has provided you with a complete list of symptoms, at the time of Dr. Jones's examination it is necessary to ask him to describe the symptom as he experienced it as well as its frequency, intensity, duration, onset and course of those symptoms over time to determine if he had a Major Depressive Disorder when examined by Dr. Jones.

BASICALLY, IF MR. SMITH HAS BEEN COOPERATIVE YOU HAVE ALL THE DATA YOU NEED TO DETERMINE IF MR. SMITH HAD A MAJOR DEPRESSIVE DISORDER AT THE TIME OF HIS TESTIMONY AND WHEN EXAMINED BY DR. JONES.

In short, a suspected Wash-In report can be dealt with when taking a claimant's deposition by getting a clear history of their symptoms at the time of the deposition and at the time of the doctor's examination or any other time in the past. If there are insufficient symptoms to correspond to the diagnostic manual's criteria, that is strong evidence that the doctor wrote a Wash-In report. If you're a defense attorney what more can you want?

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(e-mail us at DrLeckartWETC@gmail.com
for more information)

This is the eighty-eighth of a series of monthly newsletters aimed at providing information about pre-deposition/pre-trial consultations, 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.