

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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August, 2016
Volume 1, Issue 91

Helpful Information for Cross-Examining Psych Doctors

In all medical-legal psych cases after all the adversarial posturing is done one can only hope that some semblance of the truth was revealed. Regardless of which side of these litigations you take, there are things you can do to enhance your position. Specifically, whether the evaluating or treating doctor has diagnosed a disorder you don't believe is present, or whether they failed to diagnose a condition you believe the patient has, you can take effective action. Over time I have provided readers of my newsletters with various tips on how to cross-examine psych doctors. This newsletter reviews some of those tips.

Tip #1 – Never Ask About the Patient.

In cross-examining a psych doctor it is never a good idea to ask a question about the patient! I strongly recommended that all the questions you ask be directed at the doctor's report or other medical records. For example, instead of asking the doctor to describe what they observed that led them to conclude that the patient was suffering from the disorder they diagnosed, it is much better to ask them where in their report or their treatment notes you can find the data indicating that they made sufficient observations of the patient to warrant their diagnosis. Similarly, instead of asking the doctor to describe what they observed that led them to conclude that the patient was normal, ask them where in their report you can find the data indicating that they made sufficient observations of the patient, asked sufficient questions and obtained credible psychological test data to warrant that conclusion. The reason for this is quite

If in reading a psych report you find reason not to trust its credibility but you can't put your finger on all of the problems or understand how to expose them on a Cx or in a brief you can send it to me for a thorough analysis.

simple. If you ask the doctor about the patient they can feel free to provide information not in their records that may justify some of their conclusions. Obviously, those comments may or may not be correct for a variety of reasons.

Tip #2 – Focus on the Doctor's Diagnosis

When cross-examining psych doctors, attorneys should focus their questioning on what is invariably the weakest part of the doctor's report, their diagnosis. The simplest way to do this is to get a copy of the diagnostic criteria from the DSM-IV-TR and ask the doctor where in their report the reader can find the data indicating that the patient met sufficient criteria to warrant the doctor's diagnosis. Similarly, if the patient has not been diagnosed with a disorder ask the doctor where in their report the reader can find the data indicating that the patient was normal. Relevant data should always be found in the patient's life history and presenting complaints, the doctor's report of their Mental Status Examination, the objective psychological testing and the doctor's analysis of the patient's medical records. If there are insufficient data to support a specific diagnostic conclusion then that conclusion is not warranted. Thus, whether or not the doctor has diagnosed a disorder, are their sufficient data in their report to support their conclusions?

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Tip #3 – Does the Doctor’s History Support Their Diagnosis?

Assuming that a psych doctor has diagnosed a disorder, the first step in preparing to take their testimony in a courtroom or during a deposition is to obtain the diagnostic criteria from the DSM-IV-TR. The next step is to ask yourself if the doctor has provided sufficient historical data to support their diagnosis. In this regard, it is reasonable to conclude that the doctor’s report is deficient or substantially flawed if there is not a discussion of the qualitative nature of the patient’s symptoms or complaints as well as information about those symptoms frequency, intensity, duration, onset and course over time to support the doctor’s diagnosis.

Tip #4 – The Patient’s Credibility is Key

The first responsibility of any medical-legal evaluator is to demonstrate the patient’s credibility. One measure of credibility is the patient’s behavior during the doctor’s examination. If they were vague and evasive there is a good chance they were doing so because they were not telling the whole truth. Accordingly, it is reasonable for the doctor to comment in their report on whether or not they observed a patient who was or was not vague and/or evasive during the doctor’s interview. That being said, the only form of objective information that is open to public inspection and can be presented to the court are the psychological test scores. There are three psychological

tests often found in medical-legal reports that are capable of providing such data about credibility: the Minnesota Multiphasic Personality Inventory (MMPI), the Cattell Sixteen Personality Factor Test (16PF) and the Millon Clinical Multiaxial Inventory (MCMI). A discussion of these tests can be found in my book Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters that can be read or downloaded for free at www.drleckartwetc.com. By doing a little research, or getting a pre-trial or pre-deposition consult from a professional, a wise attorney can prepare for a doctor’s deposition or trial cross-examination by determining if the scores presented in the doctor’s report indicate that the patient was most likely telling the truth or trying to simulate symptoms. Of course, you never want to assume that the doctor’s interpretation of their testing results is error free!

In short, the above four tips can be used to improve the outcome of your medical-legal cases by making sure that you are adopting an effective strategy in cross-examining psych doctors. Essentially, you never want to ask the doctor about the patient, your first consideration should be the doctor’s diagnosis, you should always look at the doctor’s report to determine if there are sufficient historical data to support the doctor’s diagnosis and you must check out the data the doctor has provided that demonstrate that the patient was credible during their evaluation.

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This is the ninety-first 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.