

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross-Examining Psych Doctors: Think like a psych expert

More often than not, the playing field is uneven when an attorney cross-examines a psych doctor. Mental health practitioners have graduate school training and years of experience working in their field while, frankly, an attorney does not typically have extensive background studying and/or practicing in the mental health field. The end result is a major disadvantage for the attorney during cross-examination of the psych doctor.

To level the proverbial playing field, the attorney should "think like a psych expert." This newsletter provides a glimpse into some ways an attorney can quickly and relatively simply, think like a psych expert.

In my previous newsletter, from November, 2017, I wrote about the psych doctor's retreat to their "best professional opinion" when questioned by attorneys on cross-examination. A copy of my November, 2017 newsletter is available for free download from my website, www.DrLeckartWETC.com. With regard to the doctor's conclusions about a patient's psychological condition, a savvy psych doctor will understand that if an attorney asks questions about the doctor's opinions of causation, the GAF score, disability, mental health treatment recommendations, and/or apportionment, all they have to do is state for the record, "I gave my best professional opinion." The reason that this response will hold is that causation, the GAF score, disability, mental health treatment recommendations, and apportionment are all areas that rest almost entirely on the doctor's subjective opinions about the patient. As such, attorneys

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who plan to take testimony from a psych doctor should refrain from directing their questions to the doctor's opinions about causation, the GAF score, disability, apportionment and treatment recommendations.

Attorneys should understand that the doctor's diagnosis is the most vulnerable area of their report. The diagnosis is the one area where the response "in my professional opinion" will not work. Quite simply, the doctor's report must demonstrate that the patient met all the diagnostic criteria for the disorder found in the Diagnostic and Statistical Manual of Mental Disorders(DSM). As such, the attorney should focus all their questions on the lack of data supporting the doctor's diagnosis. When the attorney has successfully demonstrated that the doctor's diagnosis is not supported by the information contained in their report, all of the conclusions resting on the diagnosis are moot points, such as causation, the GAF score, apportionment, treatment recommendations and disability.

In addition to asking questions directed at the doctor's diagnosis, one strategy for framing the questions is to avoid open-ended questions such as, "Doctor, you stated that the patient was depressed. Can you please tell me about her depression?" When this is done, psych doctors have the opportunity of responding to open-ended questions with information that may or may not be true and accurate. In fact, there is no way to confirm the information provided in an open-ended response. In this regard, the attorney should understand that questions directed at the

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doctor's report will produce the best results on cross-examination. For example, when a doctor diagnoses a Major Depressive Disorder, they must provide information in their report demonstrating that the patient was depressed most of the day, nearly everyday. As such, the attorney should ask, "Doctor, will you please tell me where in your report I can find information indicating that the patient was depressed most of the day?"

In summary, without having extensive training in the mental health field, attorneys who cross-examine psych doctors are stepping into the batter's box without a bat!

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The cross-examination process is essentially a battle and there is going to be a clear winner. Essentially, to have a chance at winning the battle on cross-examination of a psych doctor, an attorney should think like a psych expert. However, thinking like a psych doctor is no easy task. The good news is that attorneys can call on a psych expert for help. Hiring an experienced psychologist or psychiatrist who can read the probably incorrect and misleading psych report and assist the attorney who wants to take the psych doctor's cross-examination testimony can help the attorney begin to think like a psych expert, and thus, level the playing field.

This is the one-hundred seventh 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, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.