THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross Examining Shrinks: Leckart's Fourth Rule

In the last three months I have outlined Leckart's first three rules for cross-examining psychologists and psychiatrists. Specifically, they are:

Leckart's First Rule states the attorney should never ask the doctor about the patient but always confine their questioning to the doctor's report.

Leckart's Second Rule states the attorney should always focus their questioning on the doctor's diagnosis.

Leckart's Third Rule states the attorney should always determine if the doctor's history supports their diagnosis.

Now on to Leckart's Fourth Rule

Leckart's Fourth Rule states that the attorney should always determine if the doctor has demonstrated that the patient's history they reported is credible.

Before proceeding to a discussion of how a psychologist or psychiatrist determines credibility it's important to understand that patient's who are not credible try to appear to have either more or less psychopathology than actually exists.

Individuals who attempt to appear to have more psychopathology than actually exists are said to be embellishing, exaggerating, over-reporting, simulating, faking or malingering. Individuals who are trying to portray themselves as having less psychopathology than actually exists are said to be portraying themselves in an unrealistically favorable light or denying the existence of psychological problems. For the sake of simplicity in our discussion lets call these people over-reporters and under-reporters, respectively.

When a psych doctor's report is not in your favor and you wish to challenge their conclusions, all you need is a report of the flaws in that document as well as a list of questions to ask the doctor that will expose those problems.

Over-reporters

The main motivation of over-reporters in personal injury and workers' compensation litigation is to obtain excessive compensation. In order to understand how to cross-examine a doctor who has failed to provide an accurate assessment of an over-reporter it is necessary to understand what information is available to a psychologist or psychiatrist conducting an evaluation. Essentially, a doctor has three sources of information about patient credibility: the patient's clinical presentation during the interview, the patient's psychological testing scores and the patient's medical records.

During a clinical interview, one way patient's who are over-reporting symptoms give themselves away is by inconsistent behavior. For example, they may report that they have difficulty with their memory and/or concentration but objective measurements of these processes during the clinical interview are inconsistent with their history. They also may provide different histories at different points in the interview.

Another way that over-reporters give themselves away is in evasiveness. Evasive patients are usually trying to hide something by reporting an inability to recall. But how can it be determined if they do not recall or if they are attempting to conceal relevant information? One way is to determine if their history is internally inconsistent. For example, consider the case of a woman who has been divorced on three occasions but about whom the doctor has stated that she cannot recall why! When the doctor provides that patient's history it is reasonable to ask if the doctor has also reported that the woman cannot remember a variety of details from this same time period in her life. If not, the doctor can be questioned about this inconsistency in their report, which will demonstrate the patient's lack of candor and the flawed nature of the doctor's report.

Over-reporters are also sometimes exposed by their medical records. For example, in one recent case a gentleman came into my office wearing leg, arm and back braces and walked very slowly with what seemed to be a great deal of difficulty. On taking his history he claimed to have had these physical difficulties for well over a year. What this gentleman did not know is that prior to my interviewing him I had viewed sub rosa video that was completely inconsistent with his physical presentation in my office. Specifically, the video showed him without any braces recently helping a friend move from one apartment to another during which time the patient single handedly lifted a four-drawer dresser. If you have such a case, simply show the doctor the videotape and ask them if the physical description of the patient found in their report is consistent with the video.

Perhaps the most important tool for assessing credibility is the objective psychological testing. There are thousands of psychological tests but only a handful that have been demonstrated by peer-reviewed research publications to be capable of measuring truthfulness. In litigation cases the most frequently seen tests of this nature are the various versions of the Minnesota Multiphasic Personality Inventory (MMPI), the Millon Clinical Multiaxial Inventory (MCMI) and the Cattell Sixteen Personality Factor Test (16PF). All of these tests have multiple validity or credibility scales that are capable of detecting over-reporting and under-reporting. A discussion of these tests is way beyond the scope of this newsletter. If you want more information you can go to my website (drleckartwetc.com) and read or obtain free downloads of my earlier newsletters on this topic and my book, Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters. At this point it is important to note that doctors frequently fail to interpret the validity scale scores correctly and those failures can be brought out on cross-examination if you know where to look and what to ask.

Under-reporters

Under-reporters of psychopathology are rarer in medical-legal cases and present a greater challenge to the interviewer. Generally, people who are trying to present themselves in an unrealistically favorable light are those who have something to lose if they are found to have psychopathology. For example, police officers and bus and train drivers who have been psychiatrically injured at work may fear not being able to go back to their jobs if they are deemed psychiatrically disabled. Additionally, some people are frightened by the prospect of being judged "mentally ill." They either cannot accept that image of themselves or are not comfortable with other people having that view of them. They also may be trying to convince themselves that "everything is ok" and, "I'm going to be alright."

Most frequently, people who are denying psychopathology actually provide subtle cues to the interviewer. For example, some under-reporters provide no history of symptoms or complaints of being depressed but visually they may appear "down." In these cases, if the doctor has not "tuned into" those signs, or ignored them, there will be nothing in their report supporting that conclusion. Under these circumstances the best that the cross-examiner can do is to obtain a list of the common signs of a clinical depression and ask the doctor where in their report they noted that the

patient did not present with any of those signs. Obviously, proving that something does not exist is a difficult problem that has been known for centuries. However, it is a wise physician who will tell the reader of his or her report what they did during their examination that led them to the conclusion that there was no psychopathology.

Similarly, while clinically depressed under-reporters may deny common depressive symptoms, such as difficulty with various cognitive skills like remembering, reasoning and attention, when they are tested on these processes during a face-to-face interview they are found to be dysfunctional. During the cross-examination of a doctor who has reported on such a patient it is important to ask them where in their report they provided the data they obtained in assessing these processes that indicate that the patient was normal. In reviewing thousands of reports over the last 30 years I have found that in a large number of these cases there is nothing in the reports that address these issues.

The above discussion notwithstanding, the major method for detecting under-reporting is found in the same three psychological tests that are used to detect over-reporting, the MMPI, the Cattell 16PF and the MCMI. All three have well-researched validity or credibility scales that generate objective scores indicating if the person is trying to portray him or herself in an unrealistically favorable light. Once again, a comprehensive discussion of the ins and outs of these scales is way beyond the scope of this newsletter but some of that information can be found on my website. Nevertheless, in passing, it should be noted that many psychologists and psychiatrists provide validity scale scores in their report but err in their interpretation.

Additionally, when cross-examining a doctor who is suspected of having failed to detect someone who has under-reported symptoms it is relevant to ask them where in their report they discussed the manner in which they took the patient's history. For example, people who are clinically depressed often have a variety of classic complaints or symptoms. Unfortunately, one way of not detecting psychopathology is simply not to look for it. If you suspect that has occurred you can ask yourself, "Did the doctor ask the right questions to determine if the patient had those symptoms"? If so, where in their report did they discuss the manner in which they took the history that ruled out a clinical depression?

Lastly, an individual's medical and personnel records may provide some information relevant to the cross-examination. Specifically, some under-reporters will have medical and/or personnel records that reveal the presence of psychopathology in what may be the recent past. In these cases it is important to ask the doctor where in their report they discussed the discrepancies between their lack of a diagnosis and the patient's records.

Overall, patients in medical-legal cases may over-report or under-report symptoms or complaints for a variety of reasons. Regardless, in both of these situations exactly what the cross-examiner must ask the doctor depends on the specifics of the case. However, in all cases the cross-examiner will usually end up asking about the objective psychological testing data, inconsistencies in the doctor's report, the methods described by the doctor concerning how they collected the data, and the consistency between the doctor's conclusions and the patient's medical records.

This is the seventy-first 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.