

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross Examining Shrinks: Leckart's Sixth Rule

For the last five months I have provided a discussion of Leckart's Rules for cross-examining psychologists and psychiatrists. The first five rules have been: (1) never ask the doctor about the patient but confine your questions to the doctor's report, (2) focus your questions on the doctor's diagnosis, (3) determine if the doctor has taken a complete history of the patient's symptoms or complaints that supports their diagnosis, (4) always determine if the doctor has presented a credible patient history and (5) always determine if the doctor has provided a credible report of their Mental Status Examination that supports their diagnosis.

Leckart's Sixth Rule states that the attorney should always determine if the doctor has provided a credible report of the psychological testing data that supports their diagnosis.

Unfortunately, psychological testing is a little like the modern automobile in that hardly anyone understands how it works. Thus, when a psychologist or a psychiatrist tells you that their psychological testing shows that the patient is depressed or is perfectly normal, how do you know they are correct? Unless you are an expert in testing, you don't! So what can you do? One thing you can do is obtain a work-product protected, pre-deposition/pre-trial consultation report. That's one of the things I do. Another is to self-educate yourself by developing an understanding of a few basic principles of psychological testing. This can be done by reading or obtaining a completely free download of my book

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

No matter where you are in the country, or for that matter in the world, as long as your report is in English, you can send it to me and I can provide you a critique of that testing, or if you would prefer, the entire report.

Psychological Evaluations in Litigation: A Practical Guide for Attorney's and Insurance Adjusters, at my website, www.DrLeckartWETC.com. That book describes all of the major tests used in medical-legal evaluations and describes their shortcomings or weaknesses. Think of it as a cookbook for preparing for a deposition.

If you choose to walk down this cookbook path I can recommend Chapter 6 that discusses the essentials of psychological testing in simple terms. You'll also want to check out, and maybe print out, Chapter 7, "The Most Frequently Used Tests in Litigation," which describes almost every test you will ever encounter in a litigated psych claim, providing information about each instrument's potential usefulness or limits. Truth be told, since most tests are incapable of providing meaningful information about a person's psychological status in the context of litigation, consulting Chapter 7 will go a long way in cross-examining a physician who has used instruments that are incapable of providing credible information about an applicant's psychological status.

Another resource is the numerous newsletters I've written about psychological testing. These are also available for reading or free downloading at my website, www.DrLeckartWETC.com. I'm now up to Newsletter #72 but I can specifically recommend #3 on the MMPI (Minnesota Multiphasic Personality Inventory), #5 on Projective Tests such as the Rorschach, #10 on the MCMI (Millon Clinical Multiaxial Inventory), #16 on

“Impossible MMPI-2 Scores” (yes, some doctors do report scores that are impossible to obtain), #41 on the Epworth Sleepiness Scale and #65 on The Ten Commandments of Psychological Testing. All of these are highly useful for developing pointed questions to ask doctors during a deposition.

Now what can I tell you that will help you prepare questions to ask psychologists and psychiatrists at their depositions or during trial?

First, most tests found in psych reports are incapable of providing meaningful data about a person’s psychological status in the context of litigation. The reason for this is quite simple. Most tests are either subjectively interpreted, not intended to provide information about psychopathology, and/or do not have ways of determining if the examinee has completed the test in an honest and straightforward manner.

In regard to information about patient honesty it is generally understood that the first issue that must be addressed by any medical-legal evaluator is the examinee’s credibility. Credibility can be assessed by a number of overlapping methods. During a relatively long face-to-face interview it is possible to compare what the individual has said at different points in time. Inconsistency is a measure of a lack of credibility. Another method is to compare the historical information provided by the examinee on different occasions by reading their medical, legal and personnel records. Additionally, a lack of credibility can be assessed by looking for behavioral indications of deception during a clinical interview such as evasiveness or vagueness. However, there are very few truly objective measures of credibility that generate publicly observable data that can be presented to the court. Nevertheless, there are objective psychological tests such as the Minnesota Multiphasic Personality Inventory (MMPI), which have well-known measures of deceptiveness. Essentially, those measures,

called validity scales, are very clear in indicating if the examinee was being truthful when evaluated by the doctor.

Ok, so the good news is that psychological testing data can be examined to determine if the doctor has obtained credible information supporting his or her diagnostic conclusions. The bad news is that the issues are sufficiently complex so that it is difficult for most non-psychologists and non-psychiatrists to determine if the patient provided credible data and if the doctor’s conclusions are credible. Considering that the MMPI is the major test in psychology for determining credibility and psychopathology, try reading pages 199 to 206 of my book in planning your next deposition or trial. If that doesn’t work, give me a call and I’ll help.

The help I can provide is to write a report for your use when taking doctor’s deposition or trial testimony. This report contains a description of each test with a simple to understand discussion of what the research in peer-reviewed journals has discovered about the test’s usefulness and effectiveness. You’ll have information at hand concerning whether or not the test is valid in the sense that it can measure psychopathology in a medical-legal context. You’ll know if the test contains needed measures of the patient’s credibility or honesty in completing the test’s questions or procedures. You’ll know what the testing data show about the patient. And most importantly, the report will provide you with a series of simple and direct questions you can ask the doctor that will point out any and all errors the doctor has made in administering, scoring and interpreting the testing. No matter where you are in the country, or for that matter in the world, as long as your report is in English, you can send it to me and I can provide you a critique of that testing, or if you would prefer, the entire report. You can check out sample reports of this nature at my website www.DrLeckartWETC.com.

In summary, Leckart’s Sixth Rule states that on cross-examining a psychologist or psychiatrist the attorney should always determine if the doctor has provided a credible report of the psychological testing that supports their diagnosis or lack of a diagnosis. In the case of the doctor who has provided a questionable diagnosis, the key is to obtain the DSM-IV-TR

Pre-deposition consults involving reports of an

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for more information)

diagnostic criteria for the disorder, determine if the testing data show that the patient responded in a credible fashion, and find out if those data are consistent with the doctor's diagnosis. If there are no data indicating that the patient is credible and has psychopathology then there is no support for the doctor's diagnosis or any of their other conclusions. Similarly, if the doctor has not provided a diagnosis and

you think they have missed something, the key is to look at the same testing data, determine if those data show that the patient responded in a credible fashion, and find out if the data are consistent with the doctor's non-diagnosis. Of course, the hard part is figuring out the specific questions to ask the doctor that will reveal the truth about the patient.

This is the seventy-third 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.