# THE WETC PSYCHOLOGY NEWSLETTER

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**"Find the Truth, Tell the Story"**

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## APRICOTS™ – Preparing For Psych Depositions

No one doubts that when it comes to psych reports written for workers' compensation or personal injury litigation there is no lack of substantially flawed reports. However, attorneys simply are not trained to find and expose those flaws during the doctor's deposition, trial testimony or in a written brief. That's where I come in. I absolutely love writing detailed critiques of psychological and psychiatric reports documenting the errors in those reports and telling the attorneys just how to question the doctor or write briefs that will expose the defects and lead to more just settlements and awards. For reasons that are quite mundane I call those reports, "Apricots™."

In December, 2013 I started focusing my monthly newsletters on helping attorneys take depositions without my assistance. In the ensuing months I wrote about six "Rules" to be followed for better deposition outcomes. In my October, 2014 newsletter I pointed out that the weakest link in every psych report is the doctor's diagnosis. I also noted the best questions to ask a doctor during a deposition demonstrate that there are insufficient data in the doctor's report to support their diagnostic conclusions.



***Pre-Deposition/Pre-Trial Consult Reports:*** *No matter where you are in the world as long as your report is in English, you can send it to me and I can provide you with a critique and a list of questions to ask the doctor during their testimony.*

Getting back to my December, 2013 newsletter I pointed out that it really doesn't matter which side of the fence you're on, plaintiff or applicant, or defense. Essentially, if you feel the doctor has over-diagnosed or under-diagnosed, the basic question is the same. Do the data support the doctor's conclusions? Specifically in the case of a "wash-out," there is insufficient information to justify concluding the patient has no psychological disorder. Similarly in the case of a "wash-in" the doctor has insufficient information to support the disorder or disorders they diagnosed.

This month's newsletter provides a sample of the questions a defense attorney might ask. I just as easily could have provided a series of questions for a plaintiff's or applicant's attorney. Questions such as those found below appear in each and every one of my reports. **If you want to avoid the expense of an "apricot™" report I encourage you to use the questions provided below as a model in preparing your cross-examination.**

If you want to see what a complete report looks like please go to my website, which is www.DrLeckartWETC.com. At that website you can also read and/or get a free download of my book, Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters.

Additionally, in last month's newsletter I offered to provide free telephone consultations to any attorney if they would simply email me the report. That offer will stand as long as I have the time to provide that service. If you have a problematic report and want an expert opinion on how to expose the flaws, be my guest. I just love my work!

Before we go any further it is important to understand that psychological diagnoses are made after the doctor has considered as many as five different sources of information: the patient's life history and their presenting symptoms or complaints, the results of the doctor's face-to-face Mental Status Examination, the objective psychological testing data, the patient's medical records and any sources of collateral information in the form of interviews with the patient's friends, relatives and/or business associates.

Now on to the real sample questions from an actual flawed report where the doctor diagnosed a Major Depressive Disorder with no data supporting that diagnosis and therefore no basis for finding that the applicant/plaintiff had suffered a psychiatric injury. For lack of a more creative way of handling the situation I have called the doctor being deposed "Dr. Smith," and the patient, "Mr. Jones."

**QUESTIONS I WOULD NOT WANT TO BE ASKED IF I WERE DR. SMITH**

Dr. Smith, on page 36 of your report of January 12, 2015 you diagnosed a Major Depressive Disorder with a numerical diagnostic code of 296.23. I am handing you a copy of page 356 taken from the DSM-IV-TR. Will you please confirm for me that the numerical diagnostic code of 296.23 is reserved for a Major Depressive Disorder, Single Episode, Severe Without Psychotic Features?

Dr. Smith, as you can see from reading page 356, in order to diagnose a Major Depressive Disorder correctly the individual must present with at least five of nine symptoms. In addition, eight of those nine symptoms must be present "nearly every day." Can you tell me where in your report I can find the information indicating that Mr. Jones complained of at least five symptoms that were occurring "nearly every day?"

Dr. Smith, do you agree that providing a complete history of a patient's complaints requires that you describe their qualitative nature as well as provide information about their frequency, intensity, duration, onset and course over time?

Dr. Smith, will you please tell me where in your report I can find a description of the qualitative nature of Mr. Jones's complaint of being "depressed"?

Dr. Smith, will you please tell me where in your report I can find a description of the frequency of Mr. Jones's complaint of being "depressed"?

Dr. Smith, will you please tell me where in your report I can find a description of the intensity of Mr. Jones's complaint of being "depressed"? (Note: Information about the intensity of a symptom or a complaint is typically obtained by the examining physician who asks the patient to rate the severity of their complaint on a clearly defined 10-point problem severity scale.)

Dr. Smith, will you please tell me where in your report I can find a description of the duration of Mr. Jones's complaint of being "depressed" or how long an episode lasts once it begins?

Dr. Smith, will you please tell me where in your report I can find a description of the onset of Mr. Jones's complaint of being "depressed" or when he first experienced that symptom?

Dr. Smith, will you please tell me where in your report I can find a description of the course over time of Mr. Jones's complaint of being "depressed"?

Dr. Smith, considering that your report does not provide a complete accounting of Mr. Jones's symptoms or complaints do you agree that there are no historical data in your report indicating that Mr. Jones had a Major Depressive Disorder at the time of your examination?

Dr. Smith, considering that your report does not provide a complete accounting of Mr. Jones's symptoms or complaints do you agree that your history is incomplete?

Dr. Smith, will you please confirm for me that a Mental Status Examination produces a set of observations of the patient, which are made by the doctor, using a relatively standard set of examining techniques and questions?

Dr. Smith, in discussing the results of your Mental Status Examination on page 7 of your report you summarily stated that Mr. Jones was "depressed." Will you please tell me where in your report of your Mental Status Examination of Mr. Jones you described what you actually observed that led you to that conclusion?

Dr. Smith, will you please confirm for me that in performing a Mental Status Examination the physician uses a battery of techniques to observe and assess the patient's memory and concentration or attention?

Dr. Smith, will you please tell me where in your report of your Mental Status Examination I can read about the measurements you made of Mr. Jones's memory or concentration and attention that indicates you had observed some deficits in his performance in these areas?

Dr. Smith, will you please confirm for me that in performing a Mental Status Examination the physician uses a battery of techniques to observe and assess the patient's insight and judgment?

Dr. Smith, will you please tell me where in your report of your Mental Status Examination I can read about the measurements you made of Mr. Jones's insight and judgment that indicates you had observed some deficits in his performance in these areas?

Dr. Smith, will you please confirm for me that on pages 11 through 16 you described the results of your administration and the results of six psychological tests you gave Mr. Jones?

Dr. Smith, do you agree that the first responsibility of any medical-evaluator in psychology or psychiatry is determining the credibility or truthfulness of the person being evaluated?

Dr. Smith, with the exception of the Minnesota Multiphasic Personality Inventory (MMPI) will you confirm for me that none of the six tests in your test battery have any methods for assessing Mr. Jones's credibility or truthfulness?

Dr. Smith, will you please confirm for me that interpreting an MMPI is a two-step process in which the first step involves interpreting the validity scale scores that indicate if the individual has completed the test in an honest and forthright manner?

Dr. Smith, will you please confirm for me that it is only permissible to move on to the second step and interpret the patient's MMPI clinical scale scores and make statements about their personality and possible psychopathology if their validity scale scores indicate they were honest and frank in completing the test?

Dr. Smith, will you please confirm for me that on page 14 you stated that Mr. Jones's scores on the MMPI indicated that he completed the test in an honest and frank manner and that you then went ahead and interpreted his clinical scale scores to indicate that he was depressed?

Dr. Smith, I would like you to turn to page 13 of your report where you provided some of the T-Scores Mr. Jones received on the MMPI. Will you please confirm for me that Mr. Jones received a T-Score of 107 on the F Scale and a T-Score of 78 on the Lie (L) Scale?

Dr. Smith, will you please confirm for me that a T-Score of 70 or larger on the MMPI is interpretable?

Dr. Smith, are you aware that an L or Lie Scale T-Score of 70 or greater has been specifically defined in the psychological testing literature as being characteristic of individuals "who are deliberately trying to avoid answering the MMPI frankly and honestly"?

Dr. Smith, are you aware that once an individual has been demonstrated not to be answering the MMPI items frankly and honestly that all interpretations of the remaining scores must cease and nothing further can be said about their psychological status?

Dr. Smith, will you please confirm for me that the F Scale on the MMPI is a validity scale that provides information about the patient's possibly attempting to simulate symptoms?

Dr. Smith, with regard to Mr. Jones's F Scale T-Score of 107 will you please confirm for me that a score of this magnitude indicates that with respect to Mr. Jones's symptoms he was exaggerating, embellishing, over-reporting, attempting to simulate or what some observers would call "faking" or "malingering"?

Dr. Smith, will you please tell me where in your report I can read your conclusion that Mr. Jones was attempting to simulate symptoms at the time of your examination?

Dr. Smith, isn't it correct that despite Mr. Jones's elevated scores on the Lie Scale and the F Scale that indicate he was not honest and frank during your examination but attempting to simulate symptoms that you seemingly ignored this obvious conclusion and went on to state that the MMPI clinical scale scores indicate he was depressed?

Dr. Smith, will you please tell me where in your report I can read about your review of records from any psychologist or psychiatrist who agreed with your diagnosis of a Major Depressive Disorder?

Dr. Smith, considering Mr. Jones's history and complaints as described in your report, your Mental Status Examination data, the results of your psychological testing, and your review of the medical records, will you please tell me where in your report I can find the evidence that indicates that Mr. Jones has ever had a Major Depressive Disorder?

Dr. Smith, given what we've talked about today, do you believe that in the report you wrote about Mr. Jones that you have provided a complete and accurate accounting of Mr. Jones that warrants the diagnosis of a Major Depressive Disorder?

Dr. Smith, considering all of today's questions and answers would you like to change any of the conclusions you arrived at in your report of January 12, 2015?

Overall, a doctor faced with a line of questioning that is described above really has no answers for the questions posed that will allow them to maintain any semblance of credibility for their diagnostic conclusions. Obviously, there really is no trick to "apricots™." All that is needed is a thorough knowledge of psychology, the nature of the psychological examination process, figuring out where the doctor has fallen short and made errors in drawing their conclusions, and a plan to ask direct and pointed questions about the contents of their report that leaves the doctor no wiggle room to escape.



This is the eighty-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.