

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Personal Injury Psych Reports: Cross-Examining the Psych Doctor

Thus far, I've published 101 monthly newsletters about psychological and psychiatric evaluation reports focusing on cross-examining psych doctors when you have a report on your hands that is not in your favor. While the majority of my newsletters pertain to workers' compensation cases, this month's newsletter will provide information about psych reports written for personal injury litigation and approaching cross-examination of the psych doctor.

Personal injury claims of a psychological or psychiatric injury are made for a variety of reasons including some of the more common claims of dog bites, car accidents, and slip and fall incidents on the sidewalk or on a property. Essentially, when the plaintiff claims mental or emotional damages, a psychological or psychiatric evaluation is likely to occur. The evaluating doctor will produce a report and submit their report as evidence for litigation. Every psych report submitted as evidence should contain sufficient data to support the doctor's diagnosis. In this regard, without sufficient data to support the doctor's diagnosis, not only would the report be significantly flawed, but all of the conclusions resting on the diagnosis would also be unsupported. Such conclusions that flow from the doctor's diagnosis include those about temporary or permanent psychiatric disability, the need for psychological or psychiatric care, and the extent of the patient's disability. This situation is just like a house of cards, with the diagnosis being the card at the bottom. Once the diagnosis is discredited or taken out, all of the conclusions that rest upon that diagnosis will come tumbling down without support.

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"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."

Now the question is, what data are essential to the diagnosis in an psych report for personal injury cases? Essentially, one source of data that is used to arrive at a Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosis is the patient's life history and their current symptoms, or complaints.

The doctor's evaluative report should contain a section dedicated to detailing the patient's life history and their current symptoms or complaints. Information about the patient's current complaints can easily be collected by doctor by asking them to state everything that is currently bothering them physically and/or emotionally. The doctor should also ask the patient to provide information about the frequency, intensity, duration, onset and course over time of each complaint. For example, in order to diagnose any form of a Major Depressive Disorder correctly the doctor must present evidence that the person has at least 5 of the nine symptoms as well as either symptom #1 and/or symptom #2. These nine symptoms are found in the DSM and are listed below:

1. Depressed mood, most of the day, nearly every day.
2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day.
3. Significant weight loss or weight gain when not dieting or a decrease or increase in appetite, nearly every day.
4. Insomnia or hypersomnia nearly every day.

5. Psychomotor agitation or retardation nearly every day.
6. Fatigue or loss of energy nearly every day.
7. Feelings of worthlessness or excessive or inappropriate guilt nearly every day.
8. Diminished ability to think or concentrate, or indecisiveness, nearly every day.
9. Recurrent thoughts of death, recurrent suicidal ideation without a specific plan, or a suicide attempt, or a specific plan for committing suicide.

The doctor's report should very clearly show that the patient meets the diagnostic criteria for a Major Depressive Disorder (or which ever disorder(s) were given). My recommendation for the reader of a psych report is to sit down with the doctor's report opened to the section where the doctor discusses the patient's complaints. Put the report side-by-side with the DSM opened to the page where the diagnostic criteria appear for a Major Depressive Disorder (or which ever disorder(s) were given) and simply check to see if what is in the doctor's report meets the diagnostic criteria. For example, did the doctor report that the patient complained of having a depressed mood and/or diminished interest or

pleasure, most of the day, nearly everyday? If the answer is no, then the doctor's report does not contain sufficient data in the form of the patient's current complaints to support the diagnosis of a Major Depressive Disorder.

On cross-examination, the attorney should simply ask the doctor where in their report they provided the data to support their diagnostic conclusion. For example, one question I would strongly recommend asking during a deposition is: doctor, considering that you stated in your report that the patient complained of being depressed, will you please tell me where in your report I can read about the frequency of the patient's complaint of depression? A follow up question might be: doctor, will you please tell me where in your report you stated that the patient was depressed most of the day or something similar to that?

In summary, psych reports written for personal injury claims of a psychiatric injury must contain sufficient data to support the doctor's diagnosis. One crucial source of data is the plaintiff's life history and their current symptoms, or complaints. When it is discovered that the doctor's report lacks sufficient data about the qualitative nature of the plaintiff's symptoms or complaints, the attorney should ask the doctor to direct them to the place in their report where that data exists in order to expose the flaws in their report.

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