

THE WETC PSYCHOLOGY NEWSLETTER

Dr. Bruce Leckart

Westwood Evaluation & Treatment Center
11340 Olympic Blvd., Suite 303, Los Angeles, CA 90064
310-444-3154, DrLeckartWETC@gmail.com, www.DrLeckartWETC.com

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The Importance of Medical Records in Psych Cases

I have been writing these monthly newsletters for over four years. My main motivation is to try to improve the level of reporting in personal injury and workers' compensation litigation. On many occasions these newsletters point out that the keystone of every psychological and psychiatric report is the doctor's diagnosis. Without a credible diagnosis, none of the doctor's conclusions, such as those relating to the existence of a psychiatric injury, a temporary or permanent psychiatric disability, apportionment, or a need for psychological and/or psychiatric treatment are supportable.

The Five Sets of Data Needed to Diagnose a Psychological Disorder

In regard to the above, it is extremely important to understand that psychological diagnoses are based on five sets of data which are the patient's life history and their presenting complaints, the observations the doctor makes during their face-to-face Mental Status Examination of the patient, the objective psychological testing data, the patient's medical records and any collateral sources of information. This month's newsletter deals with the importance of considering medical records, or lack thereof, in arriving at a diagnosis and therefore all of the other conclusions concerning a plaintiff's or an applicant's claim or litigation.

"medical records...can speak volumes about a plaintiff or applicant's credibility, can be used to assist a psychologist in conducting an examination, and may be valuable in drawing conclusions about a psychiatric injury and/or apportioning psychiatric disability."

Prior Psychological Reports

When it comes to medical records, the potentially most important source of information about a patient's psychological status are the medical-legal reports submitted by other psychologists and psychiatrists. When those reports are based on a competent examination; are clear, thorough and well written; and contain well-reasoned conclusions; they can offer support for a doctor's diagnosis and their other conclusions. From the point of view of the attorneys, the insurance adjusters and the courts, if more than one doctor says the same thing about the patient, this is powerful evidence. Additionally, as a psychologist who has examined thousands of patients in the context of litigation, I know I can use the medical records in evaluating the patient since they often point to areas that need to be investigated during my examination. However, psychological reports are only as powerful as the report's credibility. Unfortunately, many psychological reports contain substantial flaws that eliminate their use as a credible source of information.

To date, I have published 51 newsletters, the majority of which have provided information that can be used to spot flaws in psychological and psychiatric reports. These newsletters can all be read and/or downloaded at my website at www.DrLeckartWETC.com. You can also read or download in its entirety, a free copy of my book,

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Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters, which contains additional useful information in understanding psychological reports and cross-examining doctors. Pages 258 to 299 of the book provide an in-depth discussion of reviewing general medical records and reviewing psychological and psychiatric records for the purpose of a psychological evaluation of a plaintiff or an applicant.

Treatment or Case Notes from Mental Health Professionals

Another source of medical record information comes from the treating mental health doctor's treatment or case notes. As I pointed out in my September, 2011 newsletter, it is unfortunate but many mental health practitioners fail to create, keep, or supply such records when subpoenaed. Even more frustrating are the psychologists, psychiatrists and/or other mental health professionals who dutifully make notes on each occasion they see the patient but handwrite their comments in a completely illegible fashion. Just as frustrating are those notes that simply contain a word or two, or perhaps a sentence or so, with no context for the reader to appreciate their meaning. So, just when I think I'm going to get some valuable information about what was wrong with the patient and some data about some meaningful information about the treatment process, all I get is scribbles and fragments. Of course when this occurs, it is not possible to determine if any of the treatment administered was needed to cure or alleviate the effects of a personal injury or a work injury. Then, the only way to determine what occurred is to take the doctor's deposition, a difficult task for an attorney who, with all due respect, is an expert in the law and from what I've seen over the years does not know what to ask to get at the truth.

Treatment or Case Notes from Non-Mental Health Professionals

Another potential place to look for information about a patient's psychological status are the records of non-mental

health trained and qualified treating physicians. However, the records of non-mental health trained physician's are not of much use in drawing conclusions about an applicant's psychological status. Throughout the years I have seen uncountable medical records from family practitioners, orthopedists, internists, chiropractors and neurologists who have dutifully written in reports or treatment notes that, "Ms. Jones was depressed," or, "Ms. Jones complained about anxiety," or, "Ms. Jones complained of stress," and noted that they prescribed an anti-anxiety, an anti-depressant or some other psychotropic medication. Unfortunately, with all due respect to my colleagues in these areas, their comments are typically not supported by any detailed data in their records. In this regard, as an example, an orthopedist is no more qualified to diagnose and/or treat a Major Depressive Disorder than I am to diagnose and/or treat a 3mm broad based disc protrusion at L4-L5. As such, their ambiguous comments and prescriptions do not rise to the level of providing credible information about a patient's psychological status at any point in time. If you have any doubts about this assertion, perhaps you can tell me what it means when an orthopedist states that, "Ms. Jones complained of stress." To wit, was Ms. Jones talking about a symptom or complaint, and if so what exactly was that complaint, or was Ms. Jones telling the orthopedist something about what was going on in her environment?

It is also interesting to note that as you are reading this, it has been estimated that more than 10% of the population of the United States is now taking an anti-depressant medication, which comes to over 30,000,000 people. This same research indicates that primary care physicians, who usually have limited training in diagnosing and treating psychological disorders, write most of those prescriptions. Thus, When Dr. Smith prescribes Prozac, how valuable is that knowledge in determining if Ms. Jones had a clinical depression as defined by the DSM-IV-TR or simply said something ambiguous to Dr. Smith such as "I'm depressed?"

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Medical Records and Apportionment

Another important use of a patient's medical records is in developing opinions about the apportionment of any permanent psychiatric disability. For example, while the same logic applies to personal injury and workers' compensation litigations, in many cases applicants develop psychological disorders and concomitant psychiatric injuries as a result of one or more physical injuries in such medical disciplines as orthopedics. However, in many of these cases their orthopedic injury may not be entirely due to a specific or a continuous work injury at a single employer, but may be due to multiple injuries at more than one employer, as well as to non-industrial factors or injuries. When this occurs, and the predominant cause of the orthopedic injury has been determined to be an occupational injury stemming from a single source, it is necessary to apportion the permanent psychiatric disability to the various causes of the orthopedic injuries. In workers' compensation cases, a psychologist needs to have credible information from an Agreed and/or Panel Qualified Medical Evaluator who has done a thorough examination of the patient and can establish if there were multiple causes of their orthopedic problems that produced the psychological disorder, and if so, provide a description of the relative proportions of the applicant's (a) signs, (b) symptoms, and, (c) inability to function due to the various industrial and non-industrial physical injuries. Only by having those data from the AME or PQME is it possible to apportion the applicant's permanent psychiatric disability.

Deposition Testimony from an Applicant or Plaintiff

Another source of information about a plaintiff or an applicant's psychological status may be their deposition testimony. In conducting medical-legal evaluations I often get cases that have more than a thousand pages of medical records. I think my office's record is 3,500 pages. Many of those cases have been going on for years and the attorneys who are working on them have had the opportunity to take the plaintiff or applicant's deposition on one or more occasions. Well, "How useful or valuable is the information in those deposition transcripts?" With all due respect to my attorney colleagues, the simple answer is, "Not very useful or valuable at all." The problem here is simply that attorneys are highly trained and competent in the law,

and with very few exceptions do not have training in psychology or psychiatry, and therefore do not know what to ask the person being deposed that can elicit information that will be helpful in determining if they have or have had a disorder, and if so, what produced, aggravated or exacerbated that condition.

The solution to not collecting valuable deposition testimony about a claimant's psychological status is actually quite simple. If an attorney knows they are going to depose someone who has been diagnosed with a Major Depressive Disorder, or any other disorder, they should take the DSM-IV-TR to the deposition and simply ask the person being deposed if they have each of the symptoms needed to diagnose that disorder correctly. That will put into the legal record useful information for the psychologist or psychiatrist who may later examine the patient. Additionally, the lawyer should also obtain additional valuable information by asking the deponent about the qualitative nature of those symptoms, by requesting that they explain what feelings and thoughts they have and how they behave when they are depressed. Once armed with those data they can then ask follow-up questions about the depression's frequency, intensity, duration, onset and course over time. This same strategy can be used in taking a psychologist's or a psychiatrist's deposition and the methods and procedures for doing so appear in my November, 2012 and February, 2013 newsletters.

The above-discussion notwithstanding, a plaintiff or applicant's deposition testimony has a very real use in psychological cases when it comes time to assessing an individual's credibility. Credibility should be the first consideration of any doctor conducting a medical-legal examination. Typically during a face-to-face evaluation the doctor looks for indications of exaggeration, vagueness, deception, and/or inconsistency. However, another important source of information about credibility comes from the use of an applicant or plaintiff's deposition testimony. Quite simply, if the person being evaluated provides one set of information during their deposition that is inconsistent with the information produced during the doctor's evaluation that speaks volumes about their credibility.

Sub Rosa Videotapes

Another possible source of information about a patient can be found in sub rosa videotapes. However,

their use is extremely limited in psychological cases. One exception is when the video demonstrates that the patient has engaged in behaviors that were denied during the course of my or another doctor's evaluation. For example, if Ms. Jones has told me that she has not been out of the house in two years and I can see videotape of her shopping and/or attending a picnic during that time period, then her claim of having Agoraphobia, which is expressed as a fear of leaving the house, is not only eliminated, but all of her other symptoms or complaints are questionable. However, if a person is shown driving around town, attending dance classes, going to a little league baseball game and/or cleaning out their garage, those behaviors are not inconsistent with such severe psychological disorders as a Major Depressive Disorder. Accordingly, sub rosa videos are rarely of any use in psychology cases.

Investigation Reports

Investigation reports, like sub rosa videos, are typically only rarely useful in psych cases. Most investigation reports I have seen interview the patient and/or some of their friends and/or co-workers or supervisors. In workers' compensation cases interviewing a co-worker or supervisor does not typically generate useful information in large part because in many cases there is some animosity between the injured employee and the employer and the co-workers and/or supervisors do not want to get on the bad side of the boss by saying something that will forward the employee's litigation. However, it also should be kept in mind that some co-workers, supervisors or proprietors may be immune from management's retributions, but have their own axes to grind and may be shading their reports of the "facts" in the applicant's favor. Moreover, the investigator conducting the interview may not be sufficiently skilled or trained to ask the pointed and difficult questions needed to get at what might be the elusive truth. Additionally, it should always be remembered that the investigator is usually paid by the defense and the interviewees are not under oath to tell the truth. Nevertheless, one place where these investigation reports can be useful is to suggest areas to be explored during a psychological evaluation. Of course, the investigation has to be done before that examination and, like sub rosa videotape, they can be especially helpful if they contain verifiable facts that appear discrepant from what the person being evaluated is claiming.

Employment of Personnel Records

Employment or personnel records can be a helpful source in both personal injury and worker's compensation litigations if there has been some documentation in the records of problems in the applicant's past, or superior performances. In this regard, those records are helpful in establishing a baseline of a high level of performance, or conversely, a poor level of performance, that can be useful in determining if the worker's ability to perform their normal and customary job has deteriorated. For example, if I find that a person is currently severely clinically depressed and without doubt could not perform their job as a computer programmer and their personnel files indicate that they had been doing so at an extremely high level for 4 or 5 years prior to their work-related orthopedic injury, that goes a long way to quantifying their current psychiatric disability. Of course, those records should be sent to the doctor before the doctor's interview, not afterwards, when it is too late to use them as a guide for interviewing.

Court and/or Police Records

Court and/or police records, especially those that demonstrate prior litigation involving a previous psychiatric injury are very useful especially if there was an award or judgment with a finding of a prior injury. Obviously, that information can be used for apportionment purposes if the person still has a permanent psychiatric disability. And, once again, legal records can be used as a basis for a line of questioning during the psychological evaluation process that can be valuable in assessing the individual's credibility. Accordingly, when I find an indication that the person I'm evaluating has been in jail on three occasions and they tell me that they have never even been arrested, I know that "something is rotten in Denmark." But clearly, in order for any such records to have a full impact on a psychological evaluation they should be in the evaluator's hands prior to the examination.

The Relationship Between Physical and Psychological Injuries: Two Big Mistakes to Avoid

One extraordinarily important fact that always should be kept in mind about medical records is the limited use of documents from non-mental health

professionals. In this regard, I have one specific thing in mind. There seems to be a frequently mistaken belief about the relationship between physical pathology and psychopathology. This belief generally comes down to one of two mistaken possibilities. The first is that if the person has had a severe physical injury they “must” also have a psychological injury. The second is that if a person has had a minor physical injury they can’t have a psychological injury. Neither of these beliefs is true. I have seen individuals who have been very severely physically injured with subsequent physical disabilities whose psychological condition has been remarkably unaffected by their physical injury. Similarly, I have seen people who have been minimally physically injured who have been greatly affected psychologically by that physical injury. The only rule that exists in this area is “You just can’t tell.” I suppose if there were some known and highly positive correlation between an individual’s physical injury and physical disability and their psychological status, there would be no need for psychologists and psychiatrists to do evaluations. Just something to keep

in mind the next time you read a report in which the physical and psychological injuries do not seem to go together. That’s where a competent psychologist or psychiatrist really earns their keep, demonstrating that their conclusions are correct and explaining the discrepancy.

In summary, medical records of the types discussed above can speak volumes about a plaintiff or applicant’s credibility, can be used to assist a psychologist in conducting an examination, and may be valuable in drawing conclusions about a psychiatric injury and/or apportioning psychiatric disability. Typically, those records are only useful if credible and available prior to the time of the psychological evaluation. However, one should never lose sight of the fact that many records, such as those from some evaluating and/or treating mental health professionals, some treating non-mental health professionals and both investigative reports and sub rosa video surveillances often have extremely limited use in psychological cases.

This is the fifty-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.