

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross Examining Psych Doctors Who Have Provided "Deferred" Diagnoses

In the previous six months I have written about Leckart's Rules, numbers one through six, for cross examining psychologists and psychiatrists. Those six rules are intended for attorneys and insurance adjusters interested in deposing or taking trial testimony from psych doctors. Essentially, one who uses the Leckart Rules as a guide in approaching a cross examination will position himself or herself to expose the many possible flaws found in a doctor's report of a psychological or psychiatric evaluation.

The subject of this month's newsletter is cross examining a psychologist or psychiatrist who has offered a "Deferred" diagnosis, usually on Axis II.

First, it is necessary to understand the nature of Axis II diagnoses. In this regard, Axis II is the axis on which Personality Disorders are diagnosed. Personality Disorders are lifelong

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Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters
at www.DrLeckartWETC.com

Pre-Deposition/Pre-Trial Consult Reports:
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 either the entire report or just the psychological testing.

patterns of perceiving, relating to, and thinking about the environment and oneself that cause significant impairment in social and/or occupational functioning and/or subjective distress. Individuals with Personality Disorders frequently present with complaints of depression, anxiety, pain and a variety of physical symptoms that have no underlying organic pathology. In this regard, it is conceivable that if the individual being evaluated has a Personality Disorder that all of the complaints attributed to him or her by the evaluating doctor might be understandable in terms of that Personality Disorder. Moreover, if this were to be true, it is very unlikely that the applicant would have had an injury as a result of his or her employment or a personal injury, like an automobile accident or a slip and fall, since by definition, Personality Disorders are completely evident no later than late adolescence or early adulthood.

With that being said, many doctors write their comprehensive evaluation reports for the courts and provide a "Deferred" diagnosis on Axis II.

What is relevant about this is that according to pages 4 and 5 of the DSM-IV-TR a “Deferred” diagnosis is only used when the doctor has “Information inadequate to make any diagnostic judgment about an Axis II diagnosis.” Clearly, when the doctor provides a “Deferred” diagnosis on Axis II it makes it difficult to understand just why that doctor would choose to write what supposedly is a comprehensive report and directly admit that in doing so they had obtained information about the patient that is inadequate to understand their psychological condition, a substantial flaw in any medical legal report.

At the point of identifying that the doctor has provided a “Deferred” diagnosis on Axis II, and therefore admitted that he or she does not clearly understand the patients’s psychological condition, the question remains “What can you do about it?” In this respect, you can expose this substantial flaw on cross-examination. Exposing this flaw is actually quite simple. The deposing attorney should take copies of pages 4 and 5 of the DSM-IV-TR to the deposition or into the courtroom and hand those copies to the doctor. At that point the attorney may choose to ask the doctor some variation of the following four questions.

1. Doctor, will you please confirm that on page 26 you provided a “Deferred” diagnosis on Axis II.

2. Doctor, I am handing you a copy of pages 4 and 5 taken from the DSM-IV-TR. Will you please read aloud what it says about a “Deferred” diagnosis on Axis II?
3. Doctor, isn’t it true that by using the term “Deferred” on Axis II that you were explicitly stating that you had inadequate information to understand the patient’s condition?
4. Doctor, will you please tell me where in your report I can read about why you issued a comprehensive report of your examination of the applicant without having adequate information to fully understand the patient’s psychological condition?

In summary, when cross examining a psychologist or psychiatrist an attorney should never simply accept an evaluating doctor’s “Deferred” diagnosis as is it a clear statement that the doctor did not have adequate information to understand the patient’s psychological condition. Further, the attorney will likely see the best outcomes from deposition or trial testimony when carefully formulating questions that expose the critical flaw of providing a “Deferred” diagnosis in addition to all of the other possible substantial flaws that most likely can be found in their report.

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This is the seventy-fifth 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.