

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Flawed Psych Reports: Winners and Losers

In the words of John Henry Wigmore, cross-examination is "beyond any doubt the greatest legal engine ever invented for the discovery of truth."

3 Wigmore, Evidence §1367, p. 27 (2d ed. 1923)

I have to admit that for the 35 years I have been practicing forensic psychology I have been on a crusade.

Before I started my practice I was a tenured full professor, an academic who did research, wrote and edited journal articles and books, served on Ph.D. committees and taught a variety of courses. Believe it or not, although I wrote a book on boredom, eventually my life at the university became boring. One afternoon while playing tennis with an orthopedist friend I was complaining about my boredom when he said, "Have you ever thought about doing workers' compensation?" I said, "What's that?" He replied that he would bring me some psych reports and did so at our next tennis game. I took a quick look at those reports and said, "You're kidding! This is garbage. I can do a better job standing on my head." That was the beginning of the biggest change in my life!

Browse Dr. Leckart's Book at
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"An Apricot™ is a written-analysis of a psych report that you have that may not be in your favor. I find every flaw in the report, explain why they are flaws, and provide documentation from the published psychological and psychiatric literature that demonstrate that these flaws exist."

For the last 35 years I've focused on how awful most medical-legal reports are. In fact, I've read what I estimate is between 30,000 and 50,000 reports from psychologists and psychiatrists in both workers' compensation and personal injury litigation. Truthfully, I can't remember a single one that I couldn't demolish.

Why? I believe it's because the doctors writing those reports were predominantly trained as treating clinicians, not academics. Treating clinicians are largely concerned with treatment. Academics are largely concerned with diagnosis. The former were trained not to care about the specific fine points of their diagnosis, just how to do their job of making people feel better. The latter were trained not to say anything that they couldn't back up with hard cold evidence in the form of valid and reliable data. So the treating clinicians make a lot of mistakes in arriving at diagnoses and those mistakes make their conclusions exceedingly vulnerable to attack. The latter, like myself, are concerned with not saying anything that they can't prove beyond a reasonable doubt.

Lately, I've been thinking about all those flawed medical-legal psych reports. Who wins and who loses?

First, the doctors are the big winners. They usually get paid regardless of what happens. If the doctor writes a report that is flawed and leads to wrongful legal conclusions, they still get paid. With a limited number of doctors doing medical-legal work they continue unabated in their practice. In fact, most of the time, no one notices the flaws and their lives go on.

How about the lawyers? They also win. If they're working for the defense they get paid their salary or fees, and with minimal exceptions, their careers are not affected by the outcome of any given case. If the attorney is working for the plaintiff or the applicant they also win. Hardly a case goes by where there is a "take nothing." The only question seems to be the size of the settlement or the judgment.

So, who gets hurt?

That depends on the specific case. Lots of plaintiffs and applicants are adversely affected, especially the ones that get short-changed because the doctor underestimated the severity of their problems.

However, from my perspective the big loser seems to be the insured! Every time a plaintiff or applicant gets a settlement that is based on an over-inflated conclusion of the damage, the cost of that case gets passed on to the defendant. The insurance company doesn't take the loss without compensation. They simply raise rates. So the policyholder ultimately pays the price of an over-inflated judgment.

You're thinking, what can be done?

Until January 1, 2005 the California workers' compensation system had what were called the Psychiatric Protocols. This was simply a document that outlined some very simple principles of what had to be

found in a credible workers' compensation report. Without going into extensive detail, it required the doctor to provide such things as psychological testing scores and Mental Status Examination findings, i.e., data. Now, I have no idea why California passed the legislation eliminating those protocols but what they should have done was to create a system that increased the standards as well as their enforcement.

So what is really needed in both personal injury and workers' compensation litigation, as well as in all other forms of medical-legal reporting, is a set of published standards that the doctors must adhere to. Right now, when I write an Apricot™ and point out the substantial flaws in a report I simply say that the doctor violated "community standards in psychology and psychiatry." Those standards need to be codified and backed by the force of law, not just good judgment. Essentially, we all need to participate in creating a more just system by raising the standards of reporting.

Finally, I would like to share one my recurrent fantasies related to the poor level of reporting. Accordingly, since it is the insurance policy holders who ultimately pay for poorly written reports, maybe a group of them will rise up and file a class action lawsuit claiming that they have been damaged by the insurance company not using due diligence and good faith in settling cases by demanding competent reports.

What a rabble rousing idea!

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