

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Questions to Ask Yourself About a Psych Doctor's Report

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)

When you have a psych report that is not in your favor, or you simply know that something is amiss with the doctor's reporting and conclusions, you should find all of the substantial flaws in the report and come up with question to use in cross-examination that will expose the doctor's errors. In order to best identify the substantial flaws in the report, you should ask yourself a few key questions. This newsletter will discuss three key questions that attorneys and adjusters should ask themselves about a psych doctor's report.

1. Does the doctor's report contain sufficient historical information about the patient's life history and presenting complaints to support the doctor's diagnostic conclusions?

In every psych report, where there is a diagnosis provided by the doctor, there must be supporting data demonstrating that the patient met the criteria for the diagnosis given. Thus, the first thing to do is to obtain the diagnostic criteria from the DSM for the diagnosis given by the doctor. Next, review the doctor's history and ask yourself, "Do the data support the diagnosis?" If the history is deficient in providing information about

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the symptoms in terms of their qualitative nature as well as their frequency, intensity, duration, onset or course over time there is no support for the doctor's diagnosis.

To cite just one example, if the doctor diagnosed a Major Depressive Disorder, according to the DSM criteria, the patient must present with a depressed mood or loss of interest or pleasure that occurs most of the day, nearly everyday. If you cannot find information provided by the doctor in their history of the patient's symptoms or complaints that indicates they had a depressed mood or loss of interest or pleasure that occurs most of the day, nearly everyday, simply put, the doctor's history does not support their diagnosis.

2. Does the diagnosis the doctor provided exist in the Diagnostic and Statistical Manual of Mental Disorders (DSM)?

When you find that the doctor has provided a psychological diagnosis in their report, you should ask yourself if the diagnosis exists in the DSM. If the diagnosis does not exist in the DSM, the alternative is that the doctor simply made up their own diagnosis.

With respect to the above, it is prudent that you first find in the report where the doctor stated which version of the DSM they used in arriving at their diagnostic conclusions. Then, refer to that manual to find the diagnosis that the doctor provided. When you find that the doctor's diagnosis does not exist in the DSM, you should ask the doctor during cross-examination, "Will you please confirm that the diagnosis that you provided

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in your report does not exist in the DSM?” and “Where in your report can I find a discussion of your reason for providing a diagnosis that does not exist in the Diagnostic and Statistical Manual of Mental Disorders?”

3. Did the doctor use an obsolete DSM manual?

As mentioned above, when you find that the doctor has provided a diagnosis, you should ask yourself which version of the DSM they used in arriving at their diagnostic conclusions. Further, you should ask yourself if the DSM that the doctor used is an obsolete manual.

With regard to the above, The Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition (DSM-IV) was published by the American Psychiatric Association in 1994. The DSM-IV became obsolete when the DSM-IV-TR was published in 2000. The “TR” in DSM-IV-TR stands for Text Revision. Most recently, in May, 2013, the DSM-5 was published. While many of the diagnoses and the diagnostic criteria for disorders have remained the same with each revision of the DSM, substantial differences definitely exist between the manuals. Typically, many of the substantial differences are outlined on multiple pages in the later sections of the manuals.

To cite just one example, it is interesting to note that while many of the diagnostic criteria for disorders found in the DSM-IV-TR are the same as those found in the DSM-IV there are substantial differences in the two diagnostic manuals as summarized on pages 829 through 843 of the DSM-IV-TR. Specifically, when you find that you have a psych report where the doctor has used the DSM-IV you should ask the doctor on cross-examination, “Are you aware that the DSM-IV-TR, the successor to the DSM-IV, was published in May, 2000, making the DSM-IV obsolete at the time of your

examination?” Perhaps your follow up question should be, “Will you please tell me where in your report I can read a discussion of your reasons for using an outdated manual at the time of your examination of the patient?”

In summary, you should always question the psych report if you find yourself in a situation where the doctor has not provided sufficient evidence in their report to support their conclusions. In this situation, you should come up with a series of questions to use in exposing the report’s flaws. That’s where my expertise in reviewing and critiquing psych reports and providing cross-examination questions exposing the flaws in psych reports will be useful to you! Feel free to call my office (844) 444-8898 or email us at drleckartwetc@gmail.com when you have a question about the substantiality of a psych report and/or to refer an Apricot™. An Apricot™ describes a psych report’s flaws using non-technical language, discusses specific techniques and strategy for cross-examining the doctor and provides a variety of simple questions to ask the doctor designed to get the report’s flaws on the record despite the doctor’s evasiveness. Apricots™ can be written for personal injury, workers’ compensation, criminal cases, child custody cases or any other litigation where a psych doctor has written a report that the attorney feels is not credible. Additionally, if discovery has closed, or the attorney chooses not to cross-examine the doctor, an Apricot™ can be used to write a brief for the court pointing out all the substantial flaws in a report with citations to the psych literature. Apricots™ are work-product privileged reports that are not subject to discovery and can be used in any jurisdiction in the United States or abroad.

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